

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:18cr457
	.	
vs.	.	Alexandria, Virginia
	.	July 22, 2019
BIJAN RAFIEKIAN,	.	1:28 p.m.
	.	
Defendant.	.	Day 6 (PM Session)
	.	Pages 1048 - 1192
. . . . .	.	

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE ANTHONY J. TRENGA  
UNITED STATES DISTRICT JUDGE  
AND A JURY

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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I N D E X

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1                   A F T E R N O O N     S E S S I O N

2                                   (Defendant present, Jury out.)

3                   THE COURT: I believe you've been given a copy of the  
4 Court's proposed jury instructions. Let me summarize what,  
5 what I've -- what rulings I've made that are reflected in these  
6 instructions.

7                   With respect to Instruction No. 35 dealing with  
8 the -- what constitutes unlawful conduct under 951 and 618,  
9 I've refashioned the materiality definition, and on reflection,  
10 I'm going to change it further to say that the test for  
11 materiality is whether in light of any false statement or  
12 omission, the filed FARA registration statement and associated  
13 forms that have been received into evidence failed to provide  
14 the information requested.

15                  Also, I've considered the -- considered whether it  
16 would be appropriate to include within 35, as the government  
17 has requested, reference to provisions of law other than 612(a)  
18 for the purposes of 951. The Court ruled that the -- that an  
19 essential element of the offense in 951 was that the defendant  
20 engaged in conduct other than a lawful commercial transaction,  
21 and within that context, ruled that it considered the --  
22 whether the superseding indictment was sufficient given the  
23 standards applicable to the sufficiency of indictments.

24                  The superseding indictment did not specifically  
25 mention what the Court had determined would be an essential

1 element and then considered whether that was fatal, and for  
2 that purpose, considered the substance of the indictment, even  
3 though it didn't specifically reference what made that conduct  
4 not qualify for -- not qualify as a legal commercial  
5 transaction and determine that there was sufficient substance  
6 in the superseding indictment to fairly advise the defendant  
7 that it was -- the contention was that it was unlawful under  
8 612(a).

9           The Court specifically observed that it wasn't  
10 sufficient for the purposes of the 618(a)(2), I believe it was,  
11 and upon review, the Court concludes that it wasn't the  
12 superseding indictment -- the substance of it is insufficient  
13 to allege, allege unlawful conduct based on any other statute,  
14 including the Lobbying Disclosure Act or the Section 614 of  
15 FARA.

16           There's certainly no reference to that, and there's  
17 no allegation of conduct that would satisfy the substance of,  
18 of either of those -- any of those provisions, and indeed, the  
19 government took the position that the Lobbying Disclosure Act  
20 was irrelevant. The Court -- they filed a motion to eliminate  
21 any reference to it, and the Court denied that motion on the  
22 grounds that it deemed it relevant for the purposes of  
23 defendant's, defendant's intent and whether -- defendant's  
24 intent essentially and whether there was, in fact, an  
25 agreement.

1           So I think it would be unwarranted to instruct the  
2 jury that they could find unlawful conduct based on any  
3 provision other than 612 and that to do so would constitute a  
4 constructive amendment of the indictment.

5           With respect to Instruction No. 36, the Court has  
6 reviewed the cases that have been cited and concludes that it  
7 is appropriate to eliminate that last sentence. I don't think  
8 under the circumstances of this case that the principle that is  
9 embodied within that statement is appropriate. Certainly the  
10 parties can argue about what significance the, the actions  
11 were, but the allegation here is that the conspiracy continued  
12 through March of 2017.

13           The -- also, again, I've reflected on the Court's  
14 ruling with respect to coconspirators, and it's going to adhere  
15 to that. As I've indicated several times, there's very  
16 different -- a very different issue as to whether to admit the  
17 otherwise hearsay statements under that exception and whether  
18 the evidence is sufficient for the jury to -- for the jury to  
19 find, find guilt beyond a reasonable doubt in the -- for the  
20 purposes of the hearsay statement, the Court's obligated under  
21 Rule 104 to consider all the evidence, to weigh the evidence  
22 and act as a fact finder. As we all know, the standard for --  
23 under Rule 29 and to allow the jury to consider is whether  
24 there is substantial evidence when viewed most favorably to the  
25 government, that is, that you ignore all the unfavorable

1 evidence, you focus on the favorable inference, construe it  
2 most favorably to the government, and not worry about  
3 credibility or weight. So it's a very different -- they're  
4 very different standards.

5 So the Court adheres to its previous ruling, and the  
6 Court has included instructions that -- based on, based on that  
7 ruling.

8 And that's really all I have. I want to give the  
9 parties an opportunity to raise any other issues they have  
10 with, with the jury instructions.

11 Mr. Gibbs?

12 MR. GIBBS: Thank you, Judge. This one does relate  
13 back to Instruction No. 35.

14 THE COURT: Yes.

15 MR. GIBBS: And it's a different issue than the Court  
16 just spoke about, but at the top of page 42 --

17 THE COURT: Yes.

18 MR. GIBBS: -- it states: The government alleges  
19 that the conspiracy had as one of its objectives a violation of  
20 Section 951 because the conspiracy contemplated lobbying  
21 activities and the placement of an op-ed in the newspaper *The*  
22 *Hill*.

23 We completely agree with that, that's appropriate.  
24 We would also ask that since there is a third objective that we  
25 think the evidence bears out, and that is the investigation of

1 the Gulen schools, that would hopefully result in a criminal  
2 investigation. That also was supported by the evidence in the  
3 case, and we would ask that that be added in as well.

4 THE COURT: But was that alleged in the indictment as  
5 an unlawful objective?

6 MR. GIBBS: I'll take a look. I'm not sure. Give me  
7 one moment, Your Honor.

8 THE COURT: Yes. I guess it would be within the --  
9 alleged is what was contemplated is part of the Section 951  
10 violation?

11 MR. GIBBS: Correct, Judge.

12 THE COURT: All right. We can look at that.

13 MR. GIBBS: Thank you, Judge.

14 THE COURT: All right.

15 MR. GIBBS: And otherwise, I just had one question  
16 sort of globally. Will the Court put the entire set of jury  
17 instructions as given? Will they be filed under ECF, or how  
18 will that work? Because sometimes I know it's difficult sort  
19 of pulling it out of the transcripts.

20 THE COURT: Yeah. No, I think we do, we do have  
21 those docketed --

22 MR. GIBBS: You do? Okay.

23 THE COURT: -- as part of ECF.

24 And the jury is going to have their own individual  
25 copy.



1 MR. GIBBS: Okay. That was going to be my next  
2 question.

3 THE COURT: Yes. Every juror will have its own  
4 separate set of the instructions.

5 MR. GIBBS: Okay. Well, that's all I have then,  
6 Judge.

7 THE COURT: All right. Mr. Tysse?

8 MR. TYSSE: Sure, Your Honor. Thank you very much.

9 Beginning with what Mr. Gibbs just mentioned, we do  
10 object to inclusion of that.

11 THE COURT: Well, I'll look at the indictment.

12 MR. TYSSE: It's not referenced in the indictment,  
13 Your Honor. At least we have not seen it.

14 I have a number of objections to make. Some of them  
15 are preserving the record.

16 THE COURT: All right.

17 MR. TYSSE: I think we can do it quickly. We renew  
18 the previous objections we made, but, specifically, I'm going  
19 to go through --

20 THE COURT: All right.

21 MR. TYSSE: -- try to go throw all of them one by  
22 one.

23 Starting with Instruction No. 19, this refers to  
24 evidence from coconspirators, and it says, you know, "to be a  
25 coconspirator of the defendant" in the first sentence,

1 referring to Alptekin, and then it says "and others." We would  
2 ask the Court to please include General Michael Flynn  
3 before "and others," since that was the other prominent hearsay  
4 alleged coconspirator statement that the government sought to  
5 bring in.

6 THE COURT: Well, the statement, the instruction is  
7 intended to cover not only coconspirators but all third party  
8 statements, some of -- there was a lot of statements from  
9 people other than people who were alleged to be coconspirators.

10 MR. TYSSE: That's true, Your Honor. And it is a  
11 global instruction to that extent.

12 THE COURT: Right.

13 MR. TYSSE: We just thought because it mentions  
14 Ekim Alptekin specifically, it should mention Michael Flynn as  
15 well, but we wanted to raise that for Your Honor's  
16 consideration.

17 THE COURT: Does the government have any objection to  
18 that?

19 MR. GIBBS: No, Judge.

20 THE COURT: All right. We'll include that.

21 MR. TYSSE: The next, next instruction is Instruction  
22 No. 31. It's on page 35 of what you sent us.

23 The first sentence says, "Defendant" -- refers to the  
24 charges in Counts 1(a) and 2. We would ask the Court to refer  
25 to simply Counts 1 and 2. We think the evidence that has come

1 in has suggested that the statements were made -- that are  
2 alleged to be part of the conspiracy to make false FARA  
3 statements were made in connection --

4 THE COURT: All right.

5 MR. TYSSE: -- with discussions directly with  
6 counsel, seeking counsel's advice in a privileged situation.

7 THE COURT: All right. Is there any objection to  
8 that?

9 MR. TURGEON: Yes, Your Honor. We object to that  
10 because there's, there's been no suggestion and there's been no  
11 evidence at trial that advice of counsel was a defense to the  
12 conspiracy to make false statements in the FARA filing, Your  
13 Honor. That's just -- those false statements -- the fact  
14 gathering that led to that ultimately led to the FARA filing  
15 began, the testimony established, in late December-early  
16 January 2017.

17 Any contact that the defendant had saying, "I need to  
18 register under FARA," that, you know, that was all back in  
19 September of 2016. So --

20 THE COURT: But isn't it bound up with what Covington  
21 was doing in that period?

22 MR. TURGEON: Well --

23 THE COURT: The FARA statement is, right?

24 MR. TURGEON: Your Honor, the question is whether the  
25 defendant conspired to make false statements in the FARA

1 filing, and those false statements, again, were ultimately made  
2 in March, not as a result of anything the defendant -- well,  
3 not directly as a result of anything the defendant did in  
4 September.

5 So the advice of counsel, the defense has alleged --  
6 THE COURT: Right.

7 MR. TURGEON: -- is the advice, according to  
8 Mr. Kelley, you know, or that Mr. Kelley advice, you don't have  
9 to register under FARA, you can register under the LDA, that's  
10 the advice of counsel claim that we heard.

11 We haven't heard any advice of counsel claim relating  
12 to the false statements that were actually made in the FARA  
13 filing.

14 THE COURT: All right.

15 MR. TYSSE: On that point, Your Honor, the government  
16 has alleged that the FARA statement itself was false, and it's  
17 alleged it was false based on things my client told counsel.  
18 As we've seen, I think as the evidence came in, Mr. Kelner did  
19 an extremely thorough review. The communications between my  
20 client and Mr. Kelner were privileged contacts where they were  
21 discussing what to include on that, on that form, and if it  
22 turns out that, you know, as part of those discussions,  
23 Mr. Kelner made certain legal determinations that my client  
24 relied on, it seems that that would play directly into the  
25 advice of counsel as well. We do think it's bound up --

1 THE COURT: All right.

2 MR. TYSSE: -- and would therefore ask to remove the  
3 reference to Count 1(a) and refer to Count 1 and 2.

4 THE COURT: All right. I'm going to refer to it as  
5 Counts 1 and 2, and I think what Mr. Turgeon mentioned is  
6 within the scope of argument.

7 All right. What else?

8 MR. TYSSE: Instruction No. 33, this is pretty minor,  
9 Your Honor. It's on page 38. We believe the indictment refers  
10 to in element 4 knowingly performed an overt act in the  
11 jurisdiction, just to add that for technical purposes.

12 THE COURT: Where are we?

13 MR. TYSSE: This is on page 38. It's Instruction  
14 No. 33.

15 THE COURT: No. 4?

16 MR. TYSSE: No. 4. Just to add within the  
17 jurisdiction of the Eastern District of Virginia.

18 THE COURT: Oh, I see. Any objection to that?

19 MR. GIBBS: No, Judge. No objection.

20 THE COURT: Okay. All right. So just add to the end  
21 of that sentence "within the jurisdiction of the Eastern  
22 District"?

23 MR. TYSSE: That's right, or in a parenthetical in a  
24 clause after "performed an overt act, within the Eastern  
25 District of Virginia, in order to further or advance the

1 purpose of the agreement."

2           However Your Honor would prefer to do it.

3           THE COURT: Hold on. All right.

4           MR. TYSSE: Instruction No. 34, it's on the following  
5 page, page 39. Your Honor, in the third full paragraph, the  
6 second sentence, "Proof of a conspiracy may be made by  
7 circumstantial evidence."

8           THE COURT: Yes.

9           MR. TYSSE: After that clause, it says, "it need not  
10 and normally will not be proven by direct evidence." We would  
11 just ask to remove "and normally will not." We think -- we  
12 don't object to an instruction saying that it may be proved by  
13 direct or circumstantial evidence, but I don't think it's an  
14 accurate statement of the law that it normally will not be  
15 proven.

16           THE COURT: All right.

17           MR. TYSSE: I think it can be proven by either, for  
18 example, if they had a coconspirator testifying who said, "Yes,  
19 we were conspiring," that would be direct evidence. So I don't  
20 think "normally will not" is appropriate here.

21           THE COURT: Any objection?

22           MR. GIBBS: No, Judge. That's fine.

23           THE COURT: All right.

24           MR. TYSSE: On page 40, continuing on the same  
25 instruction, the final paragraph beginning with "What the

1 evidence in the case must establish," to us sort of seems like  
2 it's repeating some of the counts, but it's doing so in a way  
3 that's partially incomplete. For example, it doesn't talk  
4 about knowingly and deliberately joining a conspiracy.

5 Because the counts are set forth elsewhere, we  
6 propose just cutting that paragraph instead since we've already  
7 talked about in other circumstances what -- well, actually, now  
8 that I'm looking at this, this is the portion talking about the  
9 existence of an agreement.

10 Either way, we're not sure it's necessary, Your  
11 Honor, but --

12 THE COURT: All right. Any views of this?

13 MR. GIBBS: We'd ask that it remain in, Judge.

14 THE COURT: All right. I'm going to leave it --

15 MR. GIBBS: We think it's appropriate.

16 THE COURT: I'm going to leave it in.

17 MR. TYSSE: Thank you, Your Honor.

18 Instruction No. 35, page 41, we just renew our  
19 "willfully" mens rea --

20 THE COURT: All right.

21 MR. TYSSE: -- objection for the record.

22 THE COURT: All right.

23 MR. TYSSE: On page 42, just to clarify something,  
24 the first sentence refers to how the conspiracy contemplated  
25 lobbying activities in the placement of an op-ed in the

1 newspaper *The Hill* and its website on November 8, 2016. We  
2 would ask the Court to include after that sentence, "without  
3 registering as an agent of a foreign government."

4 Otherwise, it makes it sound like the conspiracy is  
5 just a lobby --

6 THE COURT: Actually, as I read this, it probably  
7 should read, "because the conspiracy contemplated lobbying  
8 activities and the placement -- and an op-ed that was placed in  
9 a newspaper."

10 MR. TYSSE: We have no objection to that, Your Honor.  
11 We just want to make clear that the conspiracy is not to do  
12 those two things. Conspiracy is to do those two things as --  
13 while acting as an unregistered agent, if he had registered --

14 THE COURT: I'm sorry, where is it?

15 MR. TYSSE: It's the same first sentence, Your Honor.  
16 Just after November 8, 2016, we would just ask to include a  
17 clause, "without registering as an agent of a foreign  
18 government" or "without registering as an agent of Turkey," in  
19 that circumstance because otherwise, it makes it seem like all  
20 the government would need to prove for a conspiracy is that two  
21 people contemplated lobbying activities or the placement of an  
22 op-ed.

23 MR. TURGEON: Your Honor, the elements of conspiracy  
24 are laid out immediately before this, and the purpose of this  
25 language, as I understand it, is essentially to explain to the



1 jury what the objects of the conspiracy were. You know, I  
2 don't think we need to again regurgitate every element of the  
3 offense to do that.

4 THE COURT: Right. I'm going to leave it the way it  
5 is. It does talk about how it's -- the objective was a  
6 violation of 951, and I think we've indicated that required  
7 that the person be operating as an undisclosed agent.

8 MR. TYSSE: Thank you, Your Honor.

9 On page 43, the -- in the carry-over paragraph,  
10 there's a sentence beginning "The government must therefore  
11 prove." Then it refers --

12 THE COURT: Where are we?

13 MR. TYSSE: On page 43, the following page.

14 THE COURT: All right.

15 MR. TYSSE: The sentence says, "The government must  
16 therefore prove that the conspiracy had as one of its  
17 objectives conduct that satisfied the essential elements of a  
18 violation of Section 612(a), namely, that a person would act as  
19 an 'agent of a foreign principal,'" and I think we need to add  
20 here "specifically the government of Turkey."

21 The reason being, this is the context of a  
22 Section 951 charge, so although it would be permissible under  
23 FARA to simply act as an agent of any foreign principal, for  
24 the purposes of the actual substantive count this is referring  
25 back to, they will also need to show the government of Turkey,

1 and so without that language in there, the jury might  
2 unreasonably think that it's sufficient to act as an agent of a  
3 foreign principal, i.e., Alptekin or Inovo BV.

4 THE COURT: Is there any objection to that?

5 MR. TURGEON: Yes. Your Honor, I just wanted to make  
6 something clear. The violation of Section 612(a) --

7 THE COURT: Yes.

8 MR. TURGEON: Actually, you know what, Your Honor, I  
9 take that back. No, there's no objection.

10 THE COURT: All right. So it would specifically --

11 MR. TYSSE: Yeah. ". . . as an 'agent of a foreign  
12 principal,' specifically the Republic of Turkey," or whatever,  
13 however else we've been referring to Turkey. I just want to  
14 make sure we're capturing who the foreign principal --

15 THE COURT: The government of Turkey?

16 MR. TYSSE: The government of Turkey.

17 THE COURT: All right.

18 MR. TYSSE: Okay. Continuing down the same page, at  
19 the very bottom, the last sentence, we renew our objection to  
20 the materiality instruction, Your Honor.

21 THE COURT: All right.

22 MR. TYSSE: I understand Your Honor has given a lot  
23 of thought to it, but again, we think that "material" would  
24 capture something other than a mere failure to provide the  
25 information requested.

1 THE COURT: Okay.

2 MR. TYSSE: So, you know, even a minor misstatement  
3 might fail to provide the information requested. We'd ask that  
4 either we add some language there saying failed to provide the  
5 information requested to a significant or a serious extent, or  
6 something, or to a -- you know, something to capture the idea  
7 of a material --

8 THE COURT: All right.

9 MR. TYSSE: -- statement, or even just to take the  
10 government's proposed language regarding whether it could  
11 move -- you know, change government action.

12 Just to renew that objection.

13 THE COURT: All right.

14 MR. TYSSE: And nearing the end here, Your Honor.

15 Page 45, Instruction No. 36, we renew our objection  
16 with regard to the cover-up language --

17 THE COURT: All right.

18 MR. TYSSE: -- you had decided in the *Grunewald* case.

19 Page -- Instruction No. 37, page 46, this is very  
20 minor, but, again, just to add "at least" -- in the first  
21 sentence, "at least one overt act in the jurisdiction" or "in  
22 the Eastern District of Virginia."

23 THE COURT: So where would that be? Oh, "at least  
24 one overt act"?

25 MR. TYSSE: In the Eastern District of Virginia.

1 THE COURT: Eastern District of Virginia?

2 MR. TYSSE: Yeah.

3 MR. GIBBS: No objection.

4 THE COURT: All right.

5 MR. TYSSE: And then my last set of objections is on  
6 Instruction 41, which goes to the essential elements of the  
7 charged offense. I have three different objections here.  
8 First, with respect to the third element --

9 THE COURT: Yes.

10 MR. TYSSE: -- these -- I believe these all go to the  
11 knowledge aspect.

12 We appreciate the Honor -- Your Honor has added to  
13 the second part of that sentence, "and that he knowingly failed  
14 to notify the attorney general." Although that gets part of  
15 the way there, we don't think it gets all the way there because  
16 again, whether or not he knew he didn't notify the attorney  
17 general does not go to his criminal intent necessarily. He  
18 would have to know he didn't notify the attorney general and  
19 realize that that constituted unlawful conduct or that he was  
20 supposed to notify the attorney general.

21 THE COURT: Well, I say "as required."

22 MR. TYSSE: Excuse me?

23 THE COURT: I say "as required." He failed to notify  
24 the attorney general as required.

25 MR. TYSSE: As required, okay. I see that. He

1 knowingly failed to -- okay. I'm sorry, I misread it then.  
2 You are correct, Your Honor.

3 THE COURT: All right.

4 MR. TYSSE: Similarly, the very last sentence of this  
5 page, page 50, I'm reading the third line -- I'm sorry, the  
6 second line from the bottom, beginning "government that did not  
7 constitute illegal commercial transaction, as that term has  
8 already been defined for you." We would just request that the  
9 Court include, "did not constitute a legal commercial  
10 transaction and with knowledge that it was not a legal  
11 commercial transaction, as that term already has been defined  
12 for you in connection with Count 1."

13 Again, because the "knowingly" -- because Your Honor  
14 has determined legal commercial transaction is an element of  
15 the offense, and under the *X-Citement* case, "knowingly" applies  
16 to all of them -- all of the elements, we would ask that Your  
17 Honor makes clear that the fact that it was not a legal -- that  
18 defendant knew that it was not a legal commercial transaction.

19 THE COURT: Mr. Turgeon?

20 MR. TURGEON: Judge, could I be heard on the last  
21 two?

22 THE COURT: Yes.

23 MR. TYSSE: Sure. If you wouldn't mind --

24 THE COURT: You have another one?

25 MR. TYSSE: -- I have a final point --

1 THE COURT: All right.

2 MR. TYSSE: -- and then he can respond to all three.

3 In general, Your Honor, we would ask, I guess just  
4 renew our objection that given the *Liparota* case, we think it  
5 would be appropriate to include language here that suggests  
6 that he must know his conduct was unlawful in this  
7 circumstance, knowing in this circumstance means knowing  
8 unlawful. We understand that it's captured partially in the  
9 knowingly failed to notify the attorney general as required,  
10 but --

11 THE COURT: All right.

12 MR. TYSSE: -- that's our position.

13 Thank you.

14 MR. TURGEON: Thank you, Judge. With regard to that  
15 last point, Your Honor, has already ruled with regard to  
16 willfulness and what mens rea is required, and I believe our  
17 reply we filed this morning goes into it.

18 So I first wanted to talk about the -- just to make  
19 clear on the record, that third element that currently  
20 states that he currently -- "and that he knowingly failed to  
21 notify the attorney general as required."

22 Your Honor, I did some brief research during lunch,  
23 and the Eleventh Circuit has joined the Seventh Circuit in  
24 holding -- and these are the only cases, I believe, that have  
25 addressed this -- that it's a correct instruction to say that

1 the defendants must have acted knowingly and then they must  
2 have known that they had not provided prior notification to the  
3 attorney general, but that says nothing of the requirement that  
4 they know about a requirement that they notify the attorney  
5 general and then not satisfy it.

6 And, in fact, the Eleventh Circuit in *Campa* and again  
7 in *Duran* joined the Seventh Circuit in *Dumeisi*, holding that  
8 there is no such requirement that the defendant know about a  
9 registration requirement with the attorney general.

10 And I can pass this case up to Your Honor if that  
11 would be helpful.

12 And -- thank you, Mr. Burns.

13 And, Your Honor, that logic applies equally to  
14 Mr. Tysse's suggestion that the Court include a requirement  
15 that the defendant have knowledge that the act was not a legal  
16 commercial transaction. I mean, that's -- that's something  
17 that obviously has never been interpreted before, but the  
18 applicability of *Duran* to that same language, which is in the  
19 statute or is in this case in the parallel construction, by  
20 that virtue, the same logic applies, Your Honor.

21 THE COURT: All right.

22 Mr. Tysse?

23 MR. TURGEON: So, Your Honor, just in sum, so we  
24 would, first of all, object to changing the instruction as the  
25 defense has requested, and we would also want the Court to

1 clarify that "as required" under that third prong, the  
2 language "as required" does not suggest that the defendant must  
3 know about a notification requirement.

4 MR. TYSSE: Thank you, Your Honor. With respect to  
5 the *Duran* case, a few points. For one, it's not a case that  
6 was analyzed in the legal commercial transaction language. As  
7 Your Honor recalls, the district court ruled on that issue, and  
8 then it was not raised on appeal again. So we don't actually  
9 know whether the Eleventh Circuit would have changed its  
10 opinion with respect to that had it be properly before it.

11 But I think more broadly, Your Honor, it is true, the  
12 government, I believe, characterizes this case accurately in  
13 terms of what it believes "knowledge" means in the  
14 circumstance. It does so, however, without analyzing the  
15 *Liparota* case or that line of cases. I'm pretty sure -- I just  
16 received the case now, but I'm pretty sure it never refers to  
17 them or the *X-Citement* case either. So again, we're not -- and  
18 it's not clear that those arguments presented to it.

19 I think the broader problem with the holding in this  
20 case is that it's sort of to, in my view, erases the knowing  
21 requirement from the statute, what it would mean to know that  
22 you failed to notify the attorney general.

23 It's, of course, true that any client who fails to  
24 register knows they didn't notify the attorney general, but he  
25 also knows he didn't notify, you know, the Queen of England or



1 the New York Yankees, too. The question is, though, in this  
2 context, what -- what is the mens rea getting at, and it's  
3 whether you knew what you were doing in this context. It's not  
4 inherently --

5 THE COURT: But it's a general intent crime, it's not  
6 a specific intent.

7 MR. TYSSE: It is, Your Honor. But unlike, unlike a  
8 crime where -- I mean, this -- this goes to the *Liparota* point,  
9 which is that in certain circumstances where you're doing  
10 things that are otherwise legal, you know, selling legal --

11 THE COURT: I thought *Liparota* dealt with the  
12 willfulness issue.

13 MR. TYSSE: It was "knowing," Your Honor, I believe.

14 THE COURT: All right.

15 MR. TYSSE: So it's saying it's sort of the  
16 heightened knowing for certain circumstances, and essentially  
17 when the underlying conduct is not inherently illegal, it's not  
18 something like selling drugs or doing something where there's  
19 no question about what you knew, I think in this circumstance,  
20 it is appropriate to have --

21 THE COURT: All right. I'll --

22 MR. TYSSE: -- a knowing whether it actually goes to  
23 whether you had knowledge of the requirement in the first  
24 place.

25 THE COURT: All right. I'll look at it.

1 MR. TYSSE: Thank you.

2 THE COURT: Anything else?

3 MR. TROUT: Your Honor?

4 THE COURT: Yes.

5 MR. TROUT: Very briefly. Your Honor, mindful that  
6 the Court is reserving on Rule 29, and I know that we have --  
7 the parties have briefed the issue, we believe that we have  
8 dissected the government's case and exposed its shortcomings,  
9 but I did want to make one final summary point.

10 Your Honor, this case illustrates the peril to  
11 someone who advocates a position, a policy position that is  
12 similar to a policy position being advocated by a foreign  
13 government. And there's genuine prophylactic value in  
14 dismissing this case before the jury decides it, sending the  
15 message to the government that accusations of criminal conduct  
16 are not to be casually made up from innocent facts, and that  
17 making up a criminal case as you go along is unacceptable.

18 If this case is allowed to be decided by the jury,  
19 and heaven help us if they convict, I think the opposite  
20 message will be sent, that quality control is not expected from  
21 the Department of Justice, that the government will be  
22 encouraged to bring cases that lack merit, that rank  
23 speculation is an adequate substitute for actual evidence and  
24 reasonable inference, and that the government can make it up as  
25 it goes along.

1           And so for all of those reasons, Your Honor, we  
2 respectfully submit that allowing the jury to decide this case  
3 would not be in the interests of justice. Thank you.

4           THE COURT: All right. Thank you.

5           The Court's going to adhere to its decision to  
6 reserve on this.

7           Anything else? What about the jury verdict form?  
8 Are you all in agreement on that?

9           MR. GIBBS: We have no objection to that, Judge. It  
10 looks fine to us.

11           THE COURT: To the one that the defense has provided?

12           MR. TURGEON: (Nodding head.)

13           THE COURT: All right. How much time would you like  
14 for closing? Mr. Gillis?

15           MR. GILLIS: Your Honor, I'd ask for 50 and 20,  
16 please.

17           THE COURT: I'm sorry?

18           MR. GILLIS: 50 and 20 minutes.

19           THE COURT: All right. So an hour and 15 minutes?

20           MR. GILLIS: Yes, sir.

21           THE COURT: All right. That's fine.

22           Yes.

23           MR. MacDOUGALL: Your Honor, was that five-oh and  
24 one-five?

25           THE COURT: It's an hour and 15 minutes, however he

1 would like to divide it.

2 MR. GILLIS: Thank you, Your Honor.

3 MR. MacDOUGALL: Your Honor, we can live very well  
4 with that.

5 THE COURT: All right.

6 MR. MacDOUGALL: Well within that.

7 THE COURT: All right. Very good.

8 Anything else? I'm going to recess shortly, look at  
9 this one or two open issues, and then we'll proceed.

10 Anything else?

11 MR. TYSSE: No, Your Honor.

12 THE COURT: All right. The Court will stand in  
13 recess.

14 (Recess from 1:59 p.m., until 2:48 p.m.)

15 (Defendant present, Jury out.)

16 THE COURT: You've been given a revised Instruction  
17 No. 41. I've looked at the, the *Duran* case, *Liparota* case, the  
18 *X-Citement* case. This case certainly has no shortage of open,  
19 unresolved challenging issues, the elements of the offense  
20 being one of them, but I've concluded that under the *Liparota*  
21 and the *X-Citement* case, that the mens rea knowing requirement  
22 applies to each element of the offense, and that includes,  
23 based on the Court's prior ruling, that the defendant knew he  
24 was an agent, and "agent" is a defined term that has  
25 incorporated into it that the person who is deemed an agent

1 engage in conduct other than a legal commercial transaction, as  
2 that term has been defined.

3           So I've fashioned the elements -- the third element  
4 to reflect that mens rea requirement. I do agree with -- upon  
5 review with the government that the -- since 951 is a general  
6 intent crime, it does not require that the defendant knew that  
7 the filing itself was required, only that he knew that he had  
8 not provided the notification to the attorney general, and so  
9 the revision reflects both those, those -- both those  
10 conclusions by the Court.

11           All right. Anything else before we bring the jury  
12 out?

13           MR. GILLIS: No, Your Honor.

14           THE COURT: All right.

15           MR. MacDOUGALL: Nothing from the defense, Your  
16 Honor.

17           THE COURT: All right. During the reading of the  
18 instructions, when we get to the end, I'm going to ask that the  
19 verdict form be placed on the Elmo so it can be seen by the  
20 jury as I take the jury through it.

21           All right. Let's bring the jury out.

22                           (Jury present.)

23           THE COURT: Please be seated. Ladies and gentlemen,  
24 we are now at the point where I will instruct you as to the law  
25 that you are to apply to the facts of this case as you

1 determine those facts to be. The instructions I give you will  
2 be also provided to you in written form so that each of you  
3 will have your own set of written instructions to review during  
4 your deliberations.

5           So while you may -- you're certainly welcome to take  
6 notes. Again, don't let your note-taking interfere with  
7 listening to the instructions, and know that you will have  
8 these instructions with you during your deliberations. It's  
9 important that you hear all of the instructions and consider  
10 all of the instructions as a whole.

11           Also, you will see that the instructions are  
12 numbered, and I obviously will go through these instructions in  
13 a certain order. You are to attach no importance to the order  
14 in which I provide these instructions. All of these  
15 instructions are equally important and should be considered by  
16 you.

17           Now that you've heard all the evidence that is to be  
18 received in this trial and each of the arguments of counsel, it  
19 becomes my duty to give you the final instructions of the Court  
20 as to the law that is applicable to this case. You should use  
21 these instructions to guide you in your decisions.

22           All of the instructions of law given to you by the  
23 Court -- those given to you at the beginning of the trial,  
24 those given to you during the trial, and these final  
25 instructions -- must guide and govern your deliberations.

1           It is your duty as jurors to follow the law as stated  
2 in all of the instructions of the Court and to apply these  
3 rules of law to the facts as you find them to be from the  
4 evidence received during the trial.

5           Counsel may properly refer to some of these -- some  
6 of the applicable rules of law in their closing arguments to  
7 you. If, however, any difference appears to you between the  
8 law as stated by counsel and that as stated by the Court in  
9 these instructions, you, of course, are to be governed by the  
10 instructions given to you by the Court.

11           You are not to single out any one instruction alone  
12 as stating the law, but must consider the instructions as a  
13 whole in reaching your decisions.

14           Neither are you to be concerned with the wisdom of  
15 any law -- any rule of law stated by the Court. Regardless of  
16 any opinion you may have as to what the law ought to be, it  
17 would be a violation of your sworn duty to base any part of  
18 your verdict upon any other view or opinion of the law than  
19 that given in these instructions of the Court, just as it would  
20 be a violation of your sworn duty as judges of the facts to  
21 base your verdict upon anything but the evidence received in  
22 the case.

23           You were chosen as jurors for this trial in order to  
24 evaluate all of the evidence received and to decide each of the  
25 factual questions presented by the allegations brought by the

1 government in the indictment and the plea of not guilty by the  
2 defendant.

3 In resolving the issues presented to you for decision  
4 in this trial, you must not be persuaded by bias, prejudice, or  
5 sympathy for or against any of the parties to this case or by  
6 any public opinion.

7 Justice through trial by jury depends upon the  
8 willingness of each individual juror to seek the truth from the  
9 same evidence presented to all the jurors here in the courtroom  
10 and to arrive at a verdict by applying the same rules of law as  
11 now being given to each of you in these instructions of the  
12 Court.

13 Testimony and exhibits can be admitted into evidence  
14 during a trial only if they meet certain criteria or standards.  
15 It is the sworn duty of attorneys on each side of a case to  
16 object when the other side offers testimony or an exhibit which  
17 that attorney believes is not properly admissible under the  
18 rules of law. Only by raising an objection can a lawyer  
19 request and obtain a ruling from the Court on the admissibility  
20 of the evidence being offered by the other side. You should  
21 not be influenced against an attorney or his or her client  
22 because the attorney has made objections.

23 Do not attempt, moreover, to interpret my rulings on  
24 objections as somehow indicating how I think you should decide  
25 the case. I am simply making a ruling on a legal question



1 regarding that particular piece of testimony or exhibit.

2           It is the duty of the Court to admonish an attorney  
3 who out of zeal for his or her cause does something which I  
4 feel is not in keeping with the rules of evidence or procedure.  
5 You are to draw absolutely no inference against the party to  
6 whom any admonition of the Court may have been addressed during  
7 the trial of this case.

8           The law of the United States permits a federal judge  
9 to comment to the jury on the evidence in a case. Such  
10 comments are, however, only expressions of my opinion as to the  
11 facts, and the jury may disregard them entirely. You, as  
12 jurors, are the sole judges of the facts in this case. It is  
13 your recollection and evaluation of the evidence that is  
14 important to the verdict in this case.

15           Although you must follow the Court's instructions  
16 concerning the law applicable to this case, you are totally  
17 free to accept or reject any observations by me concerning the  
18 evidence received in the case.

19           During the course of a trial -- during the course of  
20 the trial, I have occasionally asked questions of a witness.  
21 Do not assume that I hold any opinion on the matters to which  
22 my question may relate. The Court may ask a question simply to  
23 clarify a matter, not to help one side of the case or hurt the  
24 other side. Remember at all times you, as jurors, are the sole  
25 judges of the facts of this case.

1           The Court has permitted you to take notes during the  
2 course of this trial. You, of course, were not obligated to  
3 take notes. If you did take -- if you did not take notes, you  
4 should not be influenced by the notes of another juror, but  
5 rely upon your own recollection of the evidence.

6           Notes are only an aid to recollection and are not  
7 entitled to any greater weight than actual recollection or the  
8 impression of each juror as to what the evidence actually is.  
9 Notes taken by any juror, moreover, are not evidence in the  
10 case and must not take precedence over the independent  
11 recollection of the evidence received in the case. Any notes  
12 taken by any juror concerning this case should not be disclosed  
13 to anyone other than a fellow juror.

14           I instruct you that you must presume the defendant to  
15 be innocent of the crimes charged. Thus, the defendant,  
16 although accused of crimes in the indictment, begins the trial  
17 with a clean slate, with no evidence against him. The  
18 indictment is not evidence of any kind. The defendant is, of  
19 course, not on trial for any act or crime not contained in the  
20 indictment. The law permits nothing but legal evidence  
21 presented before the jury in court to be considered in support  
22 of any charge against the defendant. The presumption of  
23 innocence alone, therefore, is sufficient to acquit the  
24 defendant.

25           The burden is always upon the prosecution to prove

1 guilt beyond a reasonable doubt. The burden never shifts to a  
2 defendant, for the law never imposes upon a defendant in a  
3 criminal case the burden or duty of calling any witnesses or  
4 producing any evidence. The defendant is not even obligated to  
5 produce any evidence by cross-examining the witnesses for the  
6 government.

7           It is not required that the government prove guilt  
8 beyond all possible doubt. The test is one of reasonable  
9 doubt. A reasonable doubt is a doubt based upon reason and  
10 common sense, the kind of doubt that would make a reasonable  
11 person hesitant to act -- to hesitate to act. Proof beyond a  
12 reasonable doubt must therefore be proof of such a convincing  
13 character that a reasonable person would not hesitate to rely  
14 and act upon it in the most important of his or her own  
15 affairs.

16           Unless the government proves beyond a reasonable  
17 doubt that the defendant has committed each and every element  
18 of the offenses charged in the indictment, you must find the  
19 defendant not guilty of the offenses. If the jury views the  
20 evidence in the case as reasonably permitting either of two  
21 conclusions -- one of innocence, the other of guilt -- the jury  
22 must, of course, adopt the conclusion of innocence.

23           If any reference by the Court or by counsel to  
24 matters of testimony or exhibits does not coincide with your  
25 own recollection of that evidence, it is your recollection

1 which should control during your deliberations and not the  
2 statements of the Court or of counsel. You are the sole judges  
3 of the evidence received in this case.

4           There is nothing particularly different in the way  
5 that a juror should consider the evidence in a trial from that  
6 in which any reasonable and careful person would deal with any  
7 very important question that must be resolved by examining  
8 facts, opinions, and evidence. You are expected to use your  
9 good sense in considering and evaluating the evidence in the  
10 case. Use the evidence only for the purposes for which it has  
11 been received, and give the evidence a reasonable and fair  
12 construction in light of your common knowledge of the natural  
13 tendencies and inclinations of human beings.

14           If the defendant be proved guilty beyond a reasonable  
15 doubt, say so. If not proved guilty beyond a reasonable doubt,  
16 say so.

17           Keep constantly in mind that it would be a violation  
18 of your sworn duty to base a verdict upon anything other than  
19 the evidence received in the case and the instructions of the  
20 Court. Remember as well that the law never imposes upon a  
21 defendant in a criminal case the burden or duty of calling any  
22 witnesses or producing any evidence because the burden of  
23 proving guilt beyond the reasonable doubt is always with the  
24 government.

25           The evidence in this case consists of the sworn

1 testimony of witnesses, regardless of who may have called them,  
2 all exhibits received in evidence, regardless of who may have  
3 produced them, all facts which may have been agreed to or  
4 stipulated, and all facts and events which may have been  
5 judicially noticed.

6           When the attorneys on both sides stipulate or agree  
7 to the existence of a fact, you may accept the stipulation as  
8 evidence and regard that fact as proved. You are not required  
9 to do so, however, since you are the sole judges of the facts.

10           The Court has taken judicial notice of certain facts  
11 or events. When the Court declares that it has taken notice of  
12 some fact or event, you may accept the Court's declaration as  
13 evidence and regard as proved the fact or event which has been  
14 judicially noticed. You are not required to do so, however,  
15 since you are the sole judges of the facts.

16           Any proposed testimony or proposed exhibit to which  
17 an objection was sustained by the Court and any testimony or  
18 exhibit ordered stricken by the Court must be entirely  
19 disregarded by you.

20           Anything you may have seen or heard outside the  
21 courtroom is not evidence and must be entirely disregarded.

22           Questions, objections, statements, and arguments of  
23 counsel are not evidence in the case.

24           You are to base your verdict only on the evidence  
25 received in the case. In your consideration of the evidence

1 received, however, you are not limited to the bald statements  
2 of the witnesses or to the bald assertions in the exhibits. In  
3 other words, you are not limited solely to what you see and  
4 hear as the witnesses testify or as the exhibits are admitted.  
5 You are permitted to draw from the facts which you find have  
6 been proved such reasonable inferences as you feel are  
7 justified in the light of your experience and common sense.

8           There are two types of evidence which are generally  
9 presented during a trial, direct evidence and circumstantial  
10 evidence. Direct evidence is the testimony of a person who  
11 asserts or claims to have actual knowledge of a fact, such as  
12 an eyewitness. Circumstantial evidence is proof of a chain of  
13 facts and circumstances indicating the existence of a fact.

14           The law makes no distinction between the weight or  
15 value to be given to either direct or circumstantial evidence.  
16 Nor is a greater degree of certainty required of circumstantial  
17 evidence than of direct evidence. You should weigh all the  
18 evidence in the case.

19           Inferences are simply deductions or conclusions which  
20 reason and common sense lead the jury to draw from the evidence  
21 received in the case.

22           The questions asked by a lawyer for either party to  
23 this case are not evidence. If a lawyer asks a question of a  
24 witness which contains an assertion of fact, therefore, you may  
25 not consider the assertion by the lawyer as any evidence of

1 that fact. Only the answers are evidence.

2 An indictment is only a formal method used by the  
3 government to accuse a defendant of a crime. It is not  
4 evidence of any kind against the defendant. The defendant is  
5 presumed to be innocent of the crimes charged. Even though  
6 this indictment has been returned against the defendant, the  
7 defendant begins this trial with absolutely no evidence against  
8 him.

9 The defendant has pled not guilty to this indictment  
10 and, therefore, denies that he is guilty of the charges.

11 If a party offers weaker or less satisfactory  
12 evidence when stronger or more satisfactory evidence could have  
13 been produced at trial, you may, but are not required to,  
14 consider this fact in your deliberations.

15 You must remember, however, that a defendant is not  
16 obliged to produce any evidence or to call any witnesses.

17 Your decision on the facts of this case should not be  
18 determined by the number of witnesses testifying for or against  
19 a party. You should consider all the facts and circumstances  
20 in evidence to determine which of the witnesses you choose to  
21 believe or not believe. You may find that the testimony of a  
22 smaller number of witnesses on one side is more credible than  
23 the testimony of a greater number of witnesses on the other  
24 side.

25 You have heard the testimony of one or more law

1 enforcement officials. The fact that a witness may be employed  
2 by the federal government as a law enforcement official does  
3 not mean that his or her testimony is necessarily deserving of  
4 more or less consideration or greater or lesser weight than  
5 that of an ordinary witness.

6 At the same time, it is quite legitimate for defense  
7 counsel to try to attack the credibility of a law enforcement  
8 witness on the grounds that his or her testimony may be colored  
9 by a personal or professional interest in the outcome of the  
10 case.

11 It is your decision, after reviewing all the  
12 evidence, whether to accept the testimony of the law  
13 enforcement witness and to give to that testimony whatever  
14 weight, if any, you find it deserves.

15 In certain instances, evidence has been admitted only  
16 for a particular purpose and not for all purposes. For the  
17 limited purpose for which this evidence has been received, you  
18 may give it such weight as you feel it deserves. You may not,  
19 however, use this evidence for any other purpose not  
20 specifically mentioned.

21 Evidence has been received in this case of statements  
22 made by Ekim Alptekin, who is alleged in Count 1 of the  
23 indictment to be a coconspirator of the defendant, and others,  
24 including Michael Flynn. Such statements were admitted, not as  
25 evidence that what was stated was, in fact, true, but solely as



1 evidence of what was said to or in the presence of the  
2 defendant, Mr. Rafiekian. Accordingly, those statements may be  
3 considered by you solely for that purpose in connection with  
4 any issue that relates to what information Mr. Rafiekian had at  
5 any particular time.

6 Evidence has been received in this case that certain  
7 persons, who are alleged in Count 1 of the indictment to be  
8 coconspirators of the defendant, and others, have done things  
9 during the existence or life of the alleged conspiracy in order  
10 to further or advance its goals.

11 Such acts of these other individuals may be  
12 considered by you in determining whether or not the government  
13 has proven the charges in Count 1 of the indictment against the  
14 defendant.

15 Since these acts have been performed outside the  
16 presence of the defendant and even done or said without the  
17 defendant's knowledge, these acts should be examined with  
18 particular care by you before considering them against the  
19 defendant who did not do the particular act.

20 Acts done by an alleged coconspirator before a  
21 defendant joined the conspiracy may also be considered by you  
22 in determining whether the government has sustained its burden  
23 of proof in Count 1 of the indictment. Acts done by an alleged  
24 conspiracy begun -- acts done before an alleged conspiracy  
25 began or after an alleged conspiracy ended, however, may only

1 be considered by you regarding the person who performed that  
2 act.

3 The defendant in a criminal case has an absolute  
4 right under our Constitution not to testify. The fact that the  
5 defendant did not testify must not be discussed or considered  
6 in any way when deliberating and in arriving at your verdict.  
7 No inference of any kind may be drawn from the fact that a  
8 defendant decided to exercise his privilege under the  
9 Constitution and did not testify.

10 As stated before, the law never imposes upon a  
11 defendant in a criminal case the burden or duty of calling any  
12 witnesses or of producing any evidence.

13 The defendant has offered evidence of his good  
14 general reputation for truth and veracity, honesty and  
15 integrity, and being a law-abiding citizen. The jury should  
16 consider this evidence, along with all the other evidence in  
17 the case, in reaching its verdict.

18 Evidence of a defendant's reputation, inconsistent  
19 with those traits of character ordinarily involved in the  
20 commission of the crime charged, may give rise to a reasonable  
21 doubt since the jury may think it improbable or unlikely that a  
22 person of good character for truth and veracity, honesty and  
23 integrity, and being a law-abiding citizen would commit such a  
24 crime or crimes.

25 You, as jurors, are the sole and exclusive judges of

1 the credibility of each of the witnesses called to testify in  
2 this case, and only you determine the importance or the weight,  
3 if any, that their testimony deserves. After making your  
4 assessment concerning the credibility of a witness, you may  
5 decide to believe all of that witness' testimony, only a  
6 portion of it, or none of it.

7 In making your assessment of that witness, you should  
8 carefully scrutinize all of the testimony given by that  
9 witness, the circumstances under which each witness has  
10 testified, and all of the other evidence which tends to show  
11 whether a witness in your opinion is worthy of belief.  
12 Consider each witness' intelligence, motive to falsify, state  
13 of mind, and appearance and manner while on the witness stand.  
14 Consider the witness' ability to observe the matters as to  
15 which he or she may -- has testified, and consider whether he  
16 or she impresses you as having an accurate memory or  
17 recollection of these matters. Consider also any relation a  
18 witness may bear to either side of the case, the manner in  
19 which each witness might be affected by a verdict, and the  
20 extent to which, if at all, each witness is either supported or  
21 contradicted by other evidence in the case.

22 Inconsistencies or discrepancies in the testimony of  
23 a witness or between the testimony of different witnesses may  
24 or may not cause you to disbelieve or discredit such testimony.  
25 Two or more persons witnessing an incident or transaction may

1 simply see or hear it differently. Innocent misrecollection,  
2 like failure of recollection, is not an uncommon human  
3 experience. In weighing the effects of a discrepancy, however,  
4 always consider whether it pertains to a matter of importance  
5 or an insignificant detail, and consider whether the  
6 discrepancy results from innocent error or from intentional  
7 falsehood.

8           After making your own judgment or assessment  
9 concerning the believability of a witness, you can then attach  
10 such importance or weight to that testimony, if any, that you  
11 feel it deserves. You will then be in a position to decide  
12 whether the government has proven the charges beyond a  
13 reasonable doubt.

14           The testimony of a witness may be discredited or, as  
15 we sometimes say, impeached by showing that he or she  
16 previously made statements which are different than or  
17 inconsistent with his or her testimony here in court.

18           The earlier inconsistent or contradictory statements  
19 are admissible only to discredit or impeach the credibility of  
20 the witness and not to establish the truth of these earlier  
21 statements made somewhere other than here during this trial.  
22 It is the province of the jury to determine the credibility of  
23 a witness who has made prior inconsistent or contradictory  
24 statements.

25           If a person is shown to have knowingly testified

1 falsely concerning any important or material matter, you  
2 obviously have a right to distrust the testimony of such an  
3 individual concerning other matters. You may reject all of the  
4 testimony of that witness or give it such weight or credibility  
5 as you may think it deserves.

6 The defendant is not on trial for any act or conduct  
7 not specifically charged in the indictment.

8 A separate crime is charged in each count of the  
9 indictment. Each charge, and the evidence pertaining to it,  
10 should be considered separately by the jury. The fact that you  
11 may find the defendant guilty or not guilty as to one of the  
12 counts should not control your verdict as to any other count.

13 The indictment charges that each offense alleged was  
14 committed "on or about" a certain date. Although it is  
15 necessary for the government to prove beyond a reasonable doubt  
16 that each offense was committed on a date reasonably near the  
17 date alleged in the indictment, it is not necessary for the  
18 government to prove that the offense was committed precisely on  
19 the date charged.

20 Where a statute is worded in the disjunctive, meaning  
21 it uses the word "or," federal pleading requires the government  
22 to charge in the conjunctive, meaning it must use the  
23 word "and." Where a statute specifies several alternative ways  
24 in which an offense may be committed, if only one of those  
25 alternatives is proved beyond a reasonable doubt, that is

1 sufficient for conviction.

2           The term "knowingly," as used in these instructions  
3 to describe the alleged state of mind of the defendant, means  
4 that he was conscious and aware of his action, realized what he  
5 was doing or what was happening around him, and did not act  
6 because of ignorance, mistake, or accident.

7           The intent of a person or the knowledge of a  
8 person -- the intent of a person or the knowledge that a person  
9 possesses at any given time may not ordinarily be proved  
10 directly because there is no way of directly scrutinizing the  
11 workings of the human mind. In determining the issue of what a  
12 person knew or what a person intended at a particular time, you  
13 may consider any statements made or acts done by that person,  
14 and all other facts and circumstances received in evidence  
15 which may aid in your determination of that person's knowledge  
16 or intent.

17           You may infer, but you are certainly not required to  
18 infer, that a person intends the natural and probable  
19 consequences of acts knowingly done or knowingly omitted. It  
20 is entirely up to you, however, to decide what facts to find  
21 from the evidence received during the trial.

22           The defendant claims that he is not guilty of the  
23 willful or deliberate wrongdoing as charged in Counts 1 and 2  
24 of the indictment because he acted on the basis of advice from  
25 his attorney.

1           If before taking any action or failing to take some  
2           action, Defendant, while acting in good faith and for the  
3           purpose of securing advice on the lawfulness of his future  
4           conduct sought and obtained the advice of an attorney whom he  
5           considered to be competent, and made a full and accurate report  
6           or disclosure to this attorney of all important and material  
7           facts of which he had knowledge or had the means of knowing,  
8           and then acted strictly in accordance with the advice his  
9           attorney gave following this full report or disclosure, then  
10          defendant would not be willfully or deliberately doing wrong in  
11          performing some act the law forbids or omitting some act which  
12          the law requires, as those terms are used in these  
13          instructions.

14               Whether defendant acted in good faith for the purpose  
15          of truly seeking guidance as to the questions about which he  
16          was in doubt, and whether he made a full and complete report or  
17          disclosure to his attorney, and whether he acted strictly in  
18          accordance with the advice received, are all questions for you  
19          to determine.

20               I now am going to give you instructions on the  
21          specific charges in this case.

22               Count 1 of the indictment alleges a conspiracy in  
23          violation of Title 18 of the United States Code, Section 371.  
24          Title 18 of the United States Code, 371, provides in part that:  
25          If two or more persons conspire either to commit any offense

1 against the United States . . . [or] any agency thereof in any  
2 manner or for any purpose, and one or more of such persons do  
3 any act to effect the object of the conspiracy, each . . .  
4 shall be guilty of an offense against the United States.

5 Briefly summarized, Count 1 of the indictment alleges  
6 a conspiracy that had two unlawful objectives in violation of  
7 Section 371. The first alleged unlawful objective was to  
8 violate Title 18 of the United States Code, Section 951, which  
9 I sometimes will refer to in these instructions as simply  
10 Section 951. 951 prohibits acting as an agent of a foreign  
11 government without proper disclosure.

12 The second unlawful objective was to violate Title 22  
13 of the United States Code, Section 618(a), which I will  
14 sometimes refer to in these instructions simply as Section  
15 618(a).

16 Section 618(a) prohibits filing or causing to be  
17 filed a materially false registration statement under the  
18 Foreign Agents Registration Act, referred to as FARA.

19 More specifically, Count 1 of the indictment charges  
20 that from at least July 2016 through at least March 2017, in  
21 the Eastern District of Virginia and elsewhere, the defendant,  
22 Bijan Rafiekian, together with others known and unknown,  
23 knowingly and intentionally conspired with Kamil Ekim Alptekin,  
24 first, to knowingly act and cause others to act in the United  
25 States as an agent of a foreign government, that is, the



1 government of Turkey, without prior notification to the  
2 attorney general, in violation of Title 18, United States Code,  
3 Section 951; and secondly, to willfully make in a document  
4 filed with or furnished to the attorney general under the  
5 provisions of the Foreign Agents Registration Act a false  
6 statement of a material fact, and to willfully omit from the  
7 document a material fact required to be stated therein, and to  
8 willfully omit from the document a material fact or a copy of a  
9 material document necessary to make the statements therein and  
10 the copies of documents furnished therewith not misleading, in  
11 violation of Title 22 of the United States Code, Section  
12 618(a)(2), all in violation of Section 371.

13           You may find that the government has met its burden  
14 of proof as to none, one, or both of these unlawful objectives  
15 charged in this count. To find the defendant guilty of the  
16 offense of conspiracy, however, you must agree unanimously as  
17 to which one or more of the charged unlawful objectives, if  
18 any, are proven beyond a reasonable doubt.

19           The defendant has entered a plea of not guilty to  
20 this charge. The government therefore assumes the  
21 responsibility of proving beyond a reasonable doubt each of the  
22 essential elements of the offense charged in Count 1 of the  
23 indictment as to the defendant.

24           As I have already stated, Count 1 of the indictment  
25 charges the defendant with a conspiracy to violate Sections 951

1 and 618(a).

2 Four essential elements are required for the  
3 government to prove the offense of conspiracy as charged in  
4 Count 1 of the indictment:

5 First, the -- the first essential element is that the  
6 conspiracy, agreement, or understanding to violate Section 951  
7 and 618(a) as described in the indictment, was formed, reached,  
8 or entered into by two or more persons;

9 The second is that at some time during the existence  
10 or life of the conspiracy, agreement, or understanding, the  
11 defendant knew the purposes of the agreement;

12 Third, with knowledge of the purposes of the  
13 agreement, understanding -- conspiracy, agreement or  
14 understanding, the defendant then deliberately joined the  
15 conspiracy, agreement, or understanding; and

16 Fourth, at some time during the existence or life of  
17 the conspiracy, agreement, or understanding, one of its alleged  
18 members knowingly performed an overt act within the Eastern  
19 District of Virginia in order to further or advance the purpose  
20 of the agreement.

21 A criminal conspiracy is an agreement or a mutual  
22 understanding knowingly made or knowingly entered into by at  
23 least two people to violate the law by some joint or common  
24 plan or course of action. A conspiracy is, in a very true  
25 sense, a partnership in crime.

1           A conspiracy or agreement to violate the law, like  
2 any other kind of agreement or understanding, need not be  
3 formal, written, or even expressed directly in every detail.  
4 The government must prove that the defendant and at least one  
5 other person knowingly and deliberately arrived at an agreement  
6 or understanding that they, and perhaps others, would violate  
7 Section 951 and Section 618(a)(2) by means of some common plan  
8 or course of action as alleged in Count 1 of the indictment.

9           It is proof of this conscious understanding and  
10 deliberate agreement by the alleged members that should be  
11 central to your consideration of the charge of conspiracy.  
12 Unless the government proves beyond a reasonable doubt that a  
13 conspiracy, as just explained, actually existed, then you must  
14 acquit the defendant and find him not guilty.

15           To prove the existence of a conspiracy or an illegal  
16 agreement, the government is not required to produce a written  
17 contract between the parties or even produce evidence of an  
18 express oral agreement spelling out all the details of the  
19 understanding. Proof of a conspiracy may be made by  
20 circumstantial evidence. It need not be proven by direct  
21 evidence. Moreover, to prove that a conspiracy existed, the  
22 government is not required to show that all the people named in  
23 the indictment as members of the conspiracy were, in fact,  
24 parties to the agreement or that all members of the alleged  
25 conspiracy were named or charged, or that all of the people

1 whom the evidence shows were actually members of a conspiracy  
2 agreed to all of the means or methods to carry out the alleged  
3 conspiracy, or that all means and methods which were agreed  
4 upon were actually used -- were actually used -- were put into  
5 operation. Nor is the government required to prove that the  
6 parties to or members of the alleged agreement or conspiracy  
7 were successful in achieving any or all of the objects of the  
8 agreement or conspiracy.

9           What the evidence in the case must establish beyond a  
10 reasonable doubt is that the alleged conspiracy was knowingly  
11 formed, and that one or more of the means and methods that the  
12 government has alleged were agreed upon to be used in an effort  
13 to effect or accomplish some object or purpose of the  
14 conspiracy as charged in the indictment, and that two or more  
15 persons, including the defendant, were knowingly members of the  
16 conspiracy as charged in the indictment.

17           As I have explained to you, the indictment charges a  
18 conspiracy to violate Section 951 and Section 618(a), and you  
19 therefore must consider whether any conspiracy included an  
20 agreement to engage in conduct that would violate those laws.

21           I'm now going to explain to you what conduct  
22 constitutes a violation of Section 951.

23           Title 18 of the United States Code, Section 951,  
24 provides in part that:

25           Whoever, other than a diplomatic or consular officer,

1 or attaché, acts in the United States as an agent of a foreign  
2 government without prior notification to the attorney general,  
3 shall be guilty of an offense against the United States.

4 For the purposes of Section 951, an "agent of a  
5 foreign government" means "an individual who agrees to operate  
6 within the United States subject to the direction or control of  
7 a" government -- "of a foreign government or official, except  
8 such term does not include . . . any person engaged in a legal  
9 commercial transaction."

10 A "legal commercial transaction" means "any exchange,  
11 transfer, purchase or sale, of any commodity, service or  
12 property of any kind, including information or intellectual  
13 property, not prohibited by federal or state legislation or  
14 implementing regulations."

15 Based on these definitions, in order to be an "agent  
16 of a foreign government," a person must agree to operate within  
17 the United States, subject to the direction or control of a  
18 foreign government or official, and to engage in conduct other  
19 than a "legal commercial transaction."

20 In order to prove a conspiracy to violate 951, the  
21 government must therefore prove that there existed a conspiracy  
22 whose objective was to engage in conduct other than a legal  
23 commercial transaction, subject to the direction and control of  
24 a foreign government or official.

25 The government alleges that the conspiracy had as one

1 of its objectives a violation of Section 951 because the  
2 conspiracy contemplated lobbying activities and an op-ed, which  
3 was placed in the newspaper *The Hill* and its website on  
4 November 8, 2016. The government contends that the lobbying  
5 activities and the op-ed did not meet the definition of a legal  
6 commercial transaction and the person who engaged in those  
7 activities was therefore not concluded from the definition of  
8 an "agent of a foreign government" under Section 951, because  
9 engaging in those activities violated another provision of FARA  
10 not separately charged in this case, that is, Section 612 of  
11 Title 22 of the United States Code, and therefore were  
12 prohibited by federal legislation.

13           The Court further instructs you that Title 22 of the  
14 United States code, Section 612(a), states in pertinent part  
15 that "no person shall act as an agent of a foreign principal  
16 unless he has filed with the attorney general a true and  
17 complete registration statement and settlements thereto . . ."  
18 as required by FARA.

19           For the purposes of 612(a), an "agent of a foreign  
20 principal" is defined as any person who acts as:

21           [A]ny agent, representative, employee or servant, or  
22 any person who acts in any other capacity at the order,  
23 request, or under the direction or control of a foreign  
24 principal or of a person, any of whose activities are directly  
25 or indirectly supervised, directed, controlled, financed, or

1 subsidized, in whole or in major part by a foreign principal,  
2 and who directly or through any other person:

3 One, engages within the United States and political  
4 activities for or in the interests of such a foreign principal;

5 Two, acts within the United States as a public  
6 relations counsel, publicity agent, information-service  
7 employee or political consultant for or in the interests of a  
8 foreign principal;

9 Three, within the United States solicits, collects,  
10 disperses, or dispenses contributions, loans, money, or other  
11 things of value for or in the interests of such foreign  
12 principal; or

13 Four, within the United States represents the  
14 interests of such foreign principal before any agency or  
15 official of the government of the United States.

16 Accordingly, in order to prove that there exists --  
17 there existed a conspiracy to violate Section 951, the  
18 government must prove that the alleged conspiracy included an  
19 agreement to engage in conduct that violated Section 612(a).  
20 The government must therefore prove that the conspiracy had as  
21 one of its objectives conduct that satisfied the essential  
22 elements of a violation of Section 612(a), namely, that a  
23 person would act as an agent of a foreign principal,  
24 specifically the government of Turkey, as defined for the  
25 purposes of Section 612(a), without filing with the attorney

1 general the required registration statement and supplements  
2 under FARA.

3 In determining whether the government has proven a  
4 conspiracy to violate Section 951, the government is not  
5 required to prove that the conspiracy contemplated all of the  
6 activities that would cause conduct to constitute a violation  
7 of Section 612, but you must unanimously agree which  
8 contemplated activities constituted a violation of Section  
9 612(a).

10 I'm now going to tell you what constitutes a  
11 violation of Section 618(a). Section 618(a) of Title 22 of the  
12 United States Code provides in pertinent part that:

13 Any person who in any registration statement or  
14 supplement thereto or in any other document filed with or  
15 furnished to the attorney general under the provisions of this  
16 subchapter willfully makes a false statement of a material fact  
17 or willfully omits any material fact required to be stated  
18 therein or willfully omits a material fact or a copy of a  
19 material document necessary to make the statements therein  
20 and the copies of documents furnished therewith not  
21 misleading . . . shall be guilty of an offense against the  
22 United States.

23 A false statement is a fact -- a false statement of  
24 fact is an assertion that is untrue when made or when used and  
25 which is known by the person making it or using it to be



1 untrue.

2 For the purposes of determining whether a false  
3 statement of fact or an omission of a fact was "material," the  
4 test of materiality is whether in light of any false statement  
5 or omission, the filed FARA registration statement and  
6 associated forms that have been received into evidence failed  
7 to provide the information requested.

8 A person acts "willfully" when he knowingly performs  
9 an act, deliberately and intentionally, as contrasted with  
10 accidentally, carelessly or unintentionally, and with knowledge  
11 that his conduct was unlawful.

12 Accordingly, in order for you to find that there  
13 existed a conspiracy to violate Section 618(a), the government  
14 must prove that the conspiracy included an agreement that any  
15 registration statement filed under FARA would contain a willful  
16 material false statement or omission.

17 In order for the jury to find that the defendant or  
18 any other person became a member of the conspiracy charged in  
19 Count 1, the evidence must show beyond a reasonable doubt that  
20 the defendant knew the purpose or goal of the agreement or  
21 understanding and then deliberately entered into the agreement,  
22 intending in some way to accomplish the goal or purpose by this  
23 common plan or joint action.

24 Merely associating with others and discussing common  
25 goals, merely -- mere similarity of conduct between or among

1 such persons, merely being present at a place where a crime  
2 takes place or is discussed, or even knowing about criminal  
3 conduct does not of itself make someone a member of the  
4 conspiracy or a conspiratorial agreement.

5 To prove the defendant joined the alleged conspiracy,  
6 the government must prove the defendant intended to commit at  
7 least one of the substantive offenses that are the alleged  
8 unlawful objectives of the conspiracy agreement.

9 For a defendant to join a conspiracy, he must share  
10 with the partners in the criminal plan the same overall goal  
11 and must agree to pursue the same criminal objective. A  
12 defendant cannot join a conspiracy after its central objectives  
13 have been achieved.

14 In order to sustain its burden of proof under Count 1  
15 of the indictment, the government must prove beyond a  
16 reasonable doubt that one of the members of the alleged  
17 conspiracy or agreement knowingly performed at least one overt  
18 act in the Eastern District of Virginia and that this overt act  
19 was performed during the existence or life of the conspiracy  
20 and was done to somehow further the goals of the conspiracy or  
21 agreement.

22 The term "overt act" means some type of outward,  
23 objective action performed by one of the parties to or one of  
24 the members of the agreement or conspiracy which evidences that  
25 agreement.

1           Although you must unanimously agree that the same  
2           overt act was committed, the government is not required to  
3           prove more than one of the overt acts charged. The overt act  
4           may, but for the alleged illegal agreement, appear totally  
5           innocent and legal.

6           For the purposes of the charges in the indictment,  
7           the term "foreign nation" refers to any nation other than the  
8           United States, and the term "foreign government" refers to any  
9           government other than the government of the United States,  
10          regardless of whether the government or nation is an ally or  
11          enemy of the United States.

12          In order to sustain its burden of proof for Count 1,  
13          the government must show that the single conspiracy alleged in  
14          Count 1 of the indictment existed. Proof of separate or  
15          independent conspiracies is not sufficient.

16          In determining whether or not any single conspiracy  
17          has been shown by the evidence in the case, you must decide  
18          whether common, master, or overall goals or objectives existed  
19          which served as the focal point for the efforts and actions of  
20          any members to the agreement. In arriving at this decision you  
21          may consider the length of time the alleged conspiracy existed,  
22          the mutual dependence or assistance between various persons  
23          alleged to have been its members, and the complexity of the  
24          goals or objectives shown.

25          A single conspiracy may involve various people at

1 differing levels and may involve numerous transactions which  
2 are conducted over some period of time and at various places.  
3 In order to establish a single conspiracy, however, the  
4 government need not prove that an alleged coconspirator knew  
5 each of the other alleged members of the conspiracy nor need it  
6 establish that an alleged conspirator was aware of each of the  
7 transactions alleged in the indictment.

8           Even if the evidence in the case shows that the  
9 defendant was a member of some conspiracy but that this  
10 conspiracy is not the single conspiracy charged in the  
11 indictment, you must acquit the defendant of this charge.  
12 Unless the government proves the existence of the single  
13 conspiracy described in the indictment beyond a reasonable  
14 doubt, you must acquit the defendant of this charge.

15           I'm now going to give you an instruction on Count 2  
16 of the indictment.

17           Count 2 of the indictment charges that from  
18 approximately July 2016 through approximately March of 2017, in  
19 the Eastern District of Virginia and elsewhere, Bijan Rafiekian  
20 and another defendant, Kamil Ekim Alptekin, knowingly acted and  
21 caused others to act in the United States as an agent of a  
22 foreign government, that is, the government of Turkey, without  
23 prior notification to the attorney general, as required by law,  
24 all in violation of Title 18, United States Code, Sections 951  
25 and 2.

1           The defendant has entered a plea of not guilty and  
2 has denied that he is guilty of the offense charged in Count 2  
3 of the indictment. The government, therefore, assumes the  
4 responsibility of proving beyond a reasonable doubt each of the  
5 essential elements of the offense charged in Count 2 of the  
6 indictment as to the defendant.

7           Count 2 of the indictment charges Bijan Rafiekian  
8 with knowingly acting in the United States as an agent of a  
9 foreign government without prior notification to the attorney  
10 general.

11           In order to establish a violation of Count 2, the  
12 government must prove beyond a reasonable doubt the following:

13           First, that Bijan Rafiekian acted in the United  
14 States as an agent of a foreign government;

15           Second, that Bijan Rafiekian failed to notify the  
16 attorney general of the United States that he would be acting  
17 in the United States as an agent of the foreign government  
18 prior to so acting;

19           Third, that Bijan Rafiekian acted knowingly, that is,  
20 that he knew he was a person who agreed to operate within the  
21 United States subject to the direction and control of a foreign  
22 government or official, and to engage in conduct other than a  
23 legal commercial transaction as defined in Instruction 35 that  
24 I've read to you, and that he knew that he had not provided  
25 prior notification to the attorney general; and

1 Fourth, that Bijan Rafiekian acted, at least in part,  
2 as an agent for a foreign government in the Eastern District of  
3 Virginia during the time period alleged in the indictment.

4 As the Court has previously instructed you with  
5 respect to Count 1, the conspiracy charge, in order to prove  
6 that the defendant acted as an agent of a foreign government  
7 without notification in violation of Section 951, the  
8 government must prove beyond a reasonable doubt that the  
9 defendant agreed to engage in conduct at the direction and  
10 control of a foreign government that did not constitute a legal  
11 commercial transaction, as that term has already been defined  
12 for you, in connection with Count 1.

13 During your deliberations, you should not discuss or  
14 provide any information about the case with anyone other than  
15 your fellow jurors while in the jury room. This includes  
16 discussing the case in person, in writing, by phone, or by any  
17 electronic means, via text messaging, e-mail, Facebook,  
18 LinkedIn, Twitter, Instagram, blogging, or any internet chat  
19 room, website, social media, or other feature. In other words,  
20 do not talk to anyone, on the phone or in person, correspond  
21 with anyone, or communicate by electronic means about this case  
22 with anyone except with your fellow jurors, and only then while  
23 you are in the jury room.

24 If you are asked or approached in any way about your  
25 jury service or anything about this case, you are to respond

1 that you have been ordered by the judge not to discuss this  
2 matter, and you should report the contact to the Court as soon  
3 as possible.

4 Along the same lines, you should not try to access  
5 any information about the case or do research on any issue that  
6 arose during the trial or from any outside source, including  
7 dictionaries, reference books, or anything on the internet.  
8 Information that you may find on the internet or in a printed  
9 reference might be incorrect or incomplete. In our court  
10 system, it is important that you not be influenced by anyone or  
11 anything outside of the courtroom. Your sworn duty is to  
12 decide this case solely and wholly on the evidence that was  
13 presented to you in this courtroom.

14 Upon retiring to the jury room to begin your  
15 deliberations, you must elect one of your members to act as  
16 your foreperson. The foreperson will preside over your  
17 deliberations and will be your spokesperson here in court.

18 Your verdict must represent the collective judgment  
19 of the jury. In order to return a verdict, it is necessary  
20 that each juror agree to it. Your verdict, in other words,  
21 must be unanimous.

22 It is your duty as jurors to consult with one another  
23 and to deliberate with one another with a view towards reaching  
24 an agreement, if you can do so, without violence to individual  
25 judgment. Each of you must decide the case for himself and

1 herself, but do so only after an impartial consideration of the  
2 evidence in the case with your fellow jurors.

3 In the course of your deliberations, do not hesitate  
4 to reexamine your own views and to change your opinion if  
5 convinced it is erroneous. Do not surrender your honest  
6 conviction, however, solely because of the opinion of your  
7 fellow jurors or for the mere purpose of thereby being able to  
8 return a unanimous verdict.

9 Remember at all times that you are not partisans.  
10 You are judges -- judges of the facts of this case, and your  
11 sole interest is to seek the truth from the evidence received  
12 during the trial.

13 Your verdict must be based solely on the evidence  
14 received in the case. Nothing you have seen or read outside of  
15 the courtroom may be considered. Nothing I have said or done  
16 during the course of this trial is intended in any way to  
17 somehow suggest to you what I think your verdict should be.  
18 Nothing said in these instructions and nothing in any form of  
19 verdict is to suggest or convey to you in any way or manner any  
20 intimation as to what verdict I think you should return. What  
21 the verdict shall be is the exclusive duty and responsibility  
22 of the jury. And as I have told you many times, you are the  
23 sole judges of the facts.

24 The punishment provided by law for the offenses  
25 charged in the indictment is a matter exclusively within the



1 province of the Court and should never be considered by the  
2 jury in any way in arriving at an impartial verdict as to the  
3 offenses charged.

4 A form of verdict has been prepared for your  
5 convenience, and I want to show that to you now.

6 If we can put that up on the --

7 This is the verdict form that you'll complete once  
8 you have reached the verdict on each of the two counts. You'll  
9 see that as to the first count you need to indicate "Not  
10 Guilty" or "Guilty" as to each alleged objective of the  
11 conspiracy.

12 With respect to Count 2, you need also to indicate  
13 "Not Guilty" or "Guilty" with respect to that charge.

14 And once you've reached the unanimous decisions on  
15 those counts, the foreperson should sign and date the verdict  
16 form.

17 As I indicated, you'll take this form to the jury  
18 room, and when you've reached the unanimous agreement as to  
19 your verdict, you'll have your foreperson write your verdict on  
20 the form, date and sign the form, and then return with your  
21 verdict to the courtroom.

22 If it becomes necessary during your deliberations to  
23 communicate with the Court, you may send a note signed by your  
24 foreperson or by one or more members of the jury through the  
25 court security officer, Mr. Burns. No member of the jury

1 should ever attempt to communicate with the Court by any means  
2 other than a signed writing, and the Court will never  
3 communicate with any member of the jury concerning the  
4 evidence, your opinions, or the deliberations other than in  
5 writing or orally here in the courtroom.

6 You will note from the oath about to be taken by  
7 Mr. Burns that he, too, as well as other persons, are forbidden  
8 to communicate in any way or manner with any member of the jury  
9 concerning the evidence, your opinions, or deliberations.

10 Bear in mind also that you are never to reveal to any  
11 person -- not even to the Court -- how the jury stands,  
12 numerically or otherwise, on the question of whether or not the  
13 government has sustained its burden of proof until after you  
14 have reached a unanimous verdict.

15 As I indicated to you, each of you will have your own  
16 set of these instructions with you during, during your  
17 deliberations.

18 Ms. Zirk, would you swear Mr. Burns, please?

19 (Court Security Officer Burns affirmed.)

20 THE COURT: Let me see counsel at the bench, please.

21 (Bench conference on the record.)

22 THE COURT: Does the government have any objections  
23 to the instructions as written?

24 MR. GIBBS: Judge, I don't know about that --

25 THE COURT: There are a couple --

1 MR. GIBBS: Right.

2 THE COURT: -- edits that need to be made to the  
3 instructions.

4 MR. GIBBS: Right. You know, it looked like, I could  
5 see that the Court caught some of the edits, but the one that  
6 seemed most substantive was on Instruction No. 35. There was a  
7 number 2 there, and Your Honor caught, that should have said  
8 "foreign government or official."

9 THE COURT: I think I said it, didn't I?

10 MR. GIBBS: You did. So as long as that goes into  
11 the version that goes to the jury.

12 THE COURT: Okay.

13 MR. GIBBS: The other one we had, I thought on  
14 Instruction 32 that Michael Flynn was going to be listed.

15 THE COURT: I said it.

16 MR. GIBBS: Okay.

17 THE COURT: It's not in there. We're going to add  
18 it.

19 MR. GIBBS: Yeah. And that's all we had, Judge.

20 THE COURT: Yeah, I said it.

21 THE LAW CLERK: You said it as to a different  
22 instruction, not to 32.

23 THE COURT: I said it as to --

24 THE LAW CLERK: I believe on pages 23 and 24. I  
25 reprinted those to have that added.

1 THE COURT: It's page 23?

2 THE LAW CLERK: I believe.

3 MS. MITCHELL: I think it's on 22?

4 THE LAW CLERK: 22, yes. 22 and 23 sounds right.

5 THE COURT: Where's 22? Yeah.

6 THE LAW CLERK: Yeah. I made that change, and that's  
7 where you said it. You're just referring to a different  
8 instruction.

9 THE COURT: I said it in the context of No. 19. You  
10 were referring to another one?

11 MR. GIBBS: Yes, Your Honor. On the last paragraph  
12 on page 36 of Instruction No. 32.

13 THE COURT: Where?

14 MR. GIBBS: Well, actually there, Judge, let me  
15 correct that because I think that's directly quoting from the  
16 indictment.

17 THE COURT: Yeah, yeah.

18 MR. GIBBS: And so I think that's right.

19 MR. TURGEON: Actually I don't believe that's  
20 correct. I think the indictment says that the defendant and  
21 Alptekin conspired with others, known and unknown, I believe is  
22 what the indictment says.

23 THE COURT: Right. That was just taken from the  
24 indictment.

25 MR. GIBBS: Right.

1 THE COURT: Okay. Anything else?

2 MR. GIBBS: I think we're fine.

3 MR. TURGEON: I believe the distinction we're trying  
4 to draw is that conspired with Alptekin and also with Michael  
5 Flynn.

6 THE COURT: Well, that's just the statement from the  
7 indictment. I'm not going to -- I'm not going to make that  
8 change. All right?

9 MR. TURGEON: Can I refer to the indictment?

10 MR. GILLIS: No, that's fine.

11 THE COURT: Okay. All right? Anything else?

12 MR. GIBBS: Are you going to dismiss the two  
13 alternates at this time?

14 THE COURT: No. I'm going to wait until closing  
15 argument.

16 MR. GIBBS: Okay. Very good.

17 THE COURT: Any other -- any objections to the  
18 instructions as read?

19 MR. MacDOUGALL: Other than renewing and rearguing  
20 our prior objections, nothing new, Your Honor.

21 THE COURT: All right. You know, I didn't put on the  
22 record as to having a colloquy with Mr. Rafiekian concerning,  
23 to establish that he knew he had the right to testify. I  
24 assume you advised him of that and he's, he's knowingly waived  
25 his right to testify?

1 MR. MacDOUGALL: We've discussed it at length, Your  
2 Honor, and --

3 THE COURT: All right.

4 MR. MacDOUGALL: Well, we've given him appropriate  
5 advice, and he's made his decision.

6 THE COURT: All right. Should we have the colloquy  
7 directly with him?

8 MR. GIBBS: I would certainly accept the  
9 representations of counsel.

10 THE COURT: All right. In this case, I don't think  
11 we need to do it.

12 All right. Anything else?

13 MS. MITCHELL: Thank you.

14 THE COURT: All right?

15 MR. GIBBS: Thank you, Judge.

16 (End of bench conference.)

17 THE COURT: We will now proceed with closing  
18 argument. Mr. Gillis?

19 CLOSING ARGUMENT

20 BY MR. GILLIS:

21 Thank you, Your Honor.

22 Good afternoon, ladies and gentlemen. This is the  
23 first time I've had a chance to talk directly to you, so let me  
24 introduce myself. First, my name is Jim Gillis. I have the  
25 privilege to be an assistant United States attorney in your

1 district.

2 As you've heard, ladies and gentlemen, on July 15,  
3 2016, there was a coup attempt in Turkey. There -- it was  
4 against President Erdogan. There were hundreds killed. There  
5 were thousands injured. It was a two-day coup attempt that  
6 shook the very foundations of the Turkish government, and  
7 shortly thereafter, Erdogan blamed one man for being behind it:  
8 Fethullah Gulen, the person whom he'd been trying to have  
9 extradited from the United States for quite some time.

10 Now, it does not matter in this case however you feel  
11 about Fethullah Gulen, whether he's a terrorist or not a  
12 terrorist. It does not matter. It does not matter whether you  
13 believe that he should be extradited or not from the  
14 United States. That's a decision for the Department of Justice  
15 ultimately to make. But neither of those things matter here.

16 The thing that matters, and only the thing that you  
17 alone can decide, is whether the defendant conspired with  
18 Ekim Alptekin and others to act as an agent of the Turkish  
19 government without notifying the United States Department of  
20 Justice, in other words, by keeping it a secret from the  
21 government and from the American people.

22 Now, I'm going to be going through this -- the  
23 exhibits, and I -- you've seen our binders of them. There's  
24 more than a hundred, so I won't be able to cover them all with  
25 you, and those that I do, I'll be able only to speak of

1 briefly. So if you're taking notes, you may want to note the  
2 exhibit number that I discuss. Sometimes I won't even --  
3 pardon me -- sometimes I won't even put it up on the, on the  
4 screen for you.

5 But I'd like to begin with -- let's see. First --  
6 there. I'd like to begin with Government Exhibit 8A. 8 -- now  
7 it's 8B, rather. This says "8A," but it's actually 8B. 8A was  
8 never admitted, but 8B is the one that this would be.

9 Now, the first e-mail in this chain is from July 27,  
10 2016, and it's from the defendant to Alptekin, saying: Ekim,  
11 we're ready. We're looking forward to speaking with you.

12 What this tells you, folks, is that before July 27 --  
13 and evidently Tem is July in Turkish -- but in any case, this  
14 tells you that before this 27th e-mail, the defendant and  
15 Alptekin had been talking about some sort of active -- some  
16 sort of project.

17 And in the next e-mail, you see what that project is,  
18 that it's not just some project; it's a project that, according  
19 to Alptekin, involves the minister of foreign affairs in  
20 Ankara, and that he -- whatever it is that Alptekin had told --  
21 rather, that Rafiekian, the defendant, had told him before  
22 these conversations on the 27th were very good news, and they  
23 were good enough, according to Alptekin, that he wanted to  
24 bring them to the attention of the minister of foreign affairs  
25 of Turkey.



1           Now, see the defendant's response to this. Again,  
2 these are all the same day. And he says -- and this is a theme  
3 that you are going to be hearing over and over -- in that first  
4 line: We are ready to engage on what needs to be done.  
5 Turkey's security and stability is extremely important to world  
6 security. President Erdogan -- his abbreviation there, RTE for  
7 Erdogan -- can lead the campaign against radical Islam to  
8 protect the image of Islam.

9           Now, you know from this case that "radical Islam" for  
10 the defendant is code for Gulen. He doesn't speak about  
11 anybody else in connection with radical Islam. He's only been  
12 talking about Gulen throughout this whole -- this whole time.

13           Now, what this tells you, folks, is that, that the  
14 defendant knows from what he's hearing -- he understands from  
15 what he's hearing from Alptekin that this project is being  
16 taken very seriously at the highest levels. And in particular,  
17 that theme about Erdogan being so important to world stability  
18 and Gulen as the face of Islamic terror is bad, and it's  
19 completely in line with the government of Turkey's position  
20 with respect to Gulen, and that is, keep Erdogan close and give  
21 him Gulen.

22           Now, that is a theme that you're going to see carry  
23 through this whole project. Regardless of what they called it,  
24 regardless of who they said was the supposed client, this  
25 theme -- and regardless of whether they claimed it was for

1 tourism or for business or investment in Turkey, it had nothing  
2 to do with that.

3 This was always about Gulen, and it was always about  
4 that theme, and it stayed right up until the end, when the  
5 defendant ghostwrote that op-ed piece for the defendant --  
6 for -- rather, for Michael Flynn, General Flynn.

7 And when he says there constantly and in all of these  
8 things is that, you know, we're going to -- at this time, we're  
9 only going to include our partners. And as you'll see from the  
10 other -- from the other e-mails, the right time, according to  
11 the defendant, is only once they've stopped talking about the  
12 Turkish ministers and they've started talking about Inovo,  
13 Alptekin's shell company in the Netherlands, and once they  
14 start claiming that this is about confidence in the business  
15 climate in Turkey.

16 Now, this string of e-mails shows you that the  
17 defendant understood just how high in the Turkish government  
18 Alptekin's connections went, that he understood that Alptekin  
19 was reporting to the defendant about his conversations with  
20 Turkish ministers just days after the coup, folks.

21 Remember, this is days after a two-day coup, and  
22 Alptekin is telling the defendant: I've been having  
23 discussions with the foreign minister of Turkey about this  
24 project that we're going to be working on.

25 This is not about tourism or investment climate in

1 Turkey. Nobody in the government of Turkey at that point is  
2 concerned about tourism or investment in Turkey. What they're  
3 concerned about is getting a handle on Gulen and getting the  
4 United States government to turn him over because he is the one  
5 that they blame for being behind this coup.

6 What these e-mails also tell you is that Alptekin is  
7 the conduit to the defendant from the ministers of the Turkish  
8 government. Alptekin is right in between. He's keeping the  
9 defendant informed of what he's being told by the Turkish  
10 officials, and that is something that you will see recur again  
11 and again.

12 Now, if you look at Government's Exhibit 9, this is  
13 two days later, and as Alptekin tells the defendant, he's --  
14 you know, the foreign minister is still able to take time out  
15 of his busy day after, you know, putting down a coup and  
16 jailing people and cracking down, he's still able to take time  
17 and speak with Alptekin about this.

18 The MC refers to Mevlut Cavusoglu. As you heard,  
19 that's the Turkish foreign minister. It shows you again that  
20 the defendant understood that the Turkish foreign minister was  
21 taking this very, very seriously.

22 As he says right there, he wants to explore it  
23 seriously. He wants to meet with the defendant and General  
24 Flynn; and he wants Alptekin and the defendant to formulate  
25 what kind of output they could generate, and finally, he wants

1 to know an indicative budget.

2 Alptekin is telling the defendant straightforwardly  
3 this is coming right from the top here. And not only that,  
4 this is the foreign minister directing these guys to meet first  
5 of all, formulate what kind of output they can come up with,  
6 and come up with some sort of budget.

7 And what happens next then is the nine -- the nine  
8 bullet points that you've seen so much. Now, those nine bullet  
9 points -- observe, this is the subject Truth. These nine  
10 bullet points are under the Truth category at this point still.

11 What you're going to see, of course, is that these  
12 very same bullets are included later in what they're calling  
13 the Confidence Project. But that didn't change anything about  
14 the focus of this entire undertaking.

15 And so what those -- what -- you know from this, as  
16 the defendant told his lawyer -- told FIG's lawyer, Kelner, at  
17 the time -- Mr. Kelner testified here. Mr. Kelner told you  
18 that the defendant told him that this concerned a completely  
19 separate project from this Confidence thing. Completely  
20 separate.

21 But he admits that that supposedly completely  
22 separate project was for the government of Turkey. And why  
23 does he do that? He has to. There's this e-mail. There's a  
24 bunch of e-mails that show that he's in contact through  
25 Alptekin with the foreign ministers of Turkey, and the lawyers

1 have it.

2 So he's got to come up with some sort of story to  
3 cover this, and the story is, yeah, we had this thing with the  
4 government of Turkey, but it's completely different and it  
5 fell -- it fell apart, by the way.

6 Now, you'll notice there at the beginning, he talks  
7 about the active participation of Alptekin in the project.  
8 They had again carried right through to the Confidence Project,  
9 as they called it. Same bullet points, but now it's supposedly  
10 Alptekin being the senior adviser on this thing.

11 Now, this -- this then leads us to Exhibit 15; and  
12 this, you'll see, is Alptekin responding to the defendant's  
13 nine bullets under the Truth. Again, see this? This e-mail is  
14 about the Truth Project, supposedly completely different.  
15 Yeah, it was for the government of Turkey, but it was  
16 completely different from this other thing.

17 And so what you see here is again Alptekin telling  
18 the defendant: I met with the foreign minister, and I  
19 explained our proposed approach. He's receptive. He wants to  
20 meet. And as soon as we can work out the dates, we'll  
21 strategize how to approach this.

22 Strategize? That's another word for conspiracy.  
23 Because you get together and you strategize about something,  
24 and that's part of an agreement.

25 And there's a lot of different ways to make an

1 agreement. This one standing alone doesn't mean that it's  
2 illegal, but there's a lot of different ways to make an  
3 agreement, and you're going to -- we're going to talk about  
4 that in a minute.

5 But this, this -- now, this e-mail tells you what  
6 this project is going to be about, because you see that second  
7 PS there. As, as Agent Alfredo told you, this article shows  
8 the depth of the crisis we're facing. That's the article.

9 And this article, I won't -- you'll have it with you,  
10 15A. You'll have it back with your deliberations, but the gist  
11 of it is not very complimentary of Erdogan. It does -- it does  
12 not portray Gulen in a bad way; in fact, it says that he has a  
13 legal right to remain in the United States. And finally, he  
14 says that the Turkish government had better follow the rules  
15 with the Department of Justice.

16 This is *The New York Times* article. This, Alptekin  
17 says, is the depth of the crisis we are facing. And he sends  
18 this to the defendant in response to those nine bullet points.  
19 And in response -- and after saying that he's talked to the  
20 foreign minister about what they can offer, what they can do  
21 for them, and then he explains: Here's what we're facing here.  
22 Okay? We've got to get the United States turned in the right  
23 direction because right now they're saying Gulen has a legal  
24 right to be here.

25 Now, this crisis is what this project is all about,

1 and it's solving this crisis that Alptekin is telling the  
2 defendant that -- that Turkey is facing.

3 And now, if you look at Government's Exhibit 13, this  
4 again under the Truth category, who's he going to be solving  
5 this crisis for? Well, there is the apple tree analogy you've  
6 heard so much about. And it makes this connection ad nauseam  
7 about Khomeini and Gulen, that Gulen is the next Khomeini.

8 Now, this, this part right here, this persists again  
9 throughout this entire project. You're going to see this  
10 analogy when the defendant, during the time that the defendant  
11 admits that he was working under the direction of the  
12 government of Turkey, that this was a project with the  
13 government of Turkey, it was completely separate, but yes, it  
14 involved the government of Turkey, and all of these e-mails  
15 show you that he knew who was pulling the strings with respect  
16 to this. And it's here that he makes this analogy for the  
17 first time, under the Truth -- under the Truth rubric.

18 Now, what is it that is going to solve this crisis?  
19 It's establishing for the American people, the U.S. Congress,  
20 and whoever else can be influenced, that the world needs  
21 Erdogan, and they -- and Erdogan is the only one who can  
22 guarantee this stability. Erdogan is good. We gotta keep him  
23 happy, and we gotta get Gulen out of here because he's the next  
24 Khomeini.

25 So that's how the defendant plans to deal with this

1 crisis that he's now responding to in this very e-mail, the one  
2 that Alptekin brought to his attention, that *New York Times*  
3 article that shows how everything is going in the wrong way.

4 Now, this is Alptekin's response to the defendant's  
5 apple tree analogy: I had a long meeting with the minister of  
6 economy upon the reference of the foreign minister. I  
7 explained what we can offer, you and me. Rafiekian and me. He  
8 agreed to discuss in general lines along with -- at the council  
9 of ministers and then with the prime minister.

10 Now, this tells you that again, Alptekin know --  
11 rather, the defendant knows through Alptekin. He's being told.  
12 This is all the way at the top levels of the government of  
13 Turkey. And this right here, folks, is right directly in  
14 response to this famous apple tree analogy that Alptekin --  
15 rather, that Rafiekian drew time and again. And it didn't  
16 change, and neither did the purpose of this project. No matter  
17 how many times or whether they changed the name of it or tried  
18 to say that it was some completely separate project, this tells  
19 you that this thing that they are doing never, ever changes.

20 Now, if I could move you on to 16. Now, here this is  
21 where the magic happens, folks, because here you've got  
22 August 10, 2016, and Alptekin is telling Flynn and the  
23 defendant that he just had several meetings with the minister  
24 of economy and the Turkish foreign minister, and he's got a  
25 green light to discuss confidentiality, budget, and the scope



1 of the contract, and he says he's flying in at the MFA's  
2 direction to talk about it.

3 Now, this is -- as I said, keep your eye on that  
4 date. Here's the next one, August 11: Welcome back.

5 The defendant is very happy to see and hear that  
6 Alptekin is coming back, just like he said the day before.  
7 He's coming to LA at the direction of the MFA.

8 But now they're talking about this Confidence  
9 Project. The business community has engaged FIG to restore  
10 confidence through clarity in the trade and investment climate.

11 The what? Where did that come from? You had never  
12 heard anything about that before this. You heard from Special  
13 Agent Alfredo that he looked through these thousands of  
14 e-mails. This is the very first time there's any mention of  
15 confidence or investment in connection with this project.

16 And what you've heard from all the other witnesses is  
17 while this may have been some sort of fig leaf that they came  
18 up with to get their stories straight, never was that a serious  
19 objective of this project. It was always about getting dirt on  
20 Gulen and getting him extradited and making sure that Erdogan  
21 was viewed favorably by the United States government and the --  
22 and the people of the United States.

23 Now, just think for a moment about this, okay? The  
24 defendant's been told by the Turkish -- by Alptekin that the  
25 Turkish foreign minister is on this, that the prime minister

1 has been informed about it, it's been taken up to the council  
2 of ministers, and the foreign minister has given us the green  
3 light on August 10, the green light. And then somehow in the  
4 next 12 hours, that all evaporates, and suddenly a completely  
5 separate project springs forth on August 11.

6           They want you to believe that there was never any  
7 mention of this in any of the e-mails, no mention of it to  
8 anyone? Like, gee, we had this -- we were so close on this  
9 contract with the minister of foreign affairs. He gave us the  
10 green light. And then, like, you know, a few hours later, all  
11 of a sudden the rug is pulled out from under us.

12           Wouldn't you expect that there would be some sort of  
13 communication, some sort of Skype chat? These guys were  
14 talking all the time by e-mail, and yet there's nothing in  
15 there, like, oh, some -- no kind of explanation for why it all  
16 went poof?

17           No. It's just you're supposed to believe that this  
18 project just -- the project that Alptekin -- rather, the  
19 defendant says was involved with the government of Turkey,  
20 you're supposed to believe that in 12 hours, that magically  
21 disappeared without them saying a word about it, and then  
22 mysteriously out of the mist comes this other project,  
23 completely unrelated, another project, and that all happens  
24 overnight. But don't worry, folks, because this new project  
25 has got nothing to do with the government of Turkey, nothing to

1 do with Gulen. What it's about is restoring confidence in the  
2 investment climate.

3 And then I want you to look at this right here.  
4 This, folks, we are not -- as the judge told you, we're not  
5 obliged to show you a smoking gun or an actual written  
6 agreement, but this is about as close as you're going to get,  
7 because what this is is a cover story. You replace engagement  
8 purpose with cover story, and that is what this is. Ekim,  
9 Bijan here, cover story, the business community is engaging FIG  
10 to restore confidence through clarity.

11 Well, that's nonsense, folks, and your common sense  
12 will tell you that without doing any sort of back and forth by  
13 e-mail or chat or anything, mentioning it to anybody at FIG at  
14 any time.

15 You know, we were so close to getting this project  
16 with the Turkish government, but it just went away, and you  
17 won't believe what happened next, like, within 12 hours.  
18 Suddenly there's this other business community that comes to  
19 the rescue on a completely separate project, and, thank God,  
20 they're willing to pay us 600,000 to do it, and we would manage  
21 to do all of that without a single e-mail taking place before  
22 then.

23 We're all talking with the government of Turkey. The  
24 agent tells you there's nothing in there about confidence,  
25 nothing about anything else that relates to this supposedly new

1 project, and yet we're supposed to believe that this springs  
2 out of thin air without ever there being any sort of  
3 negotiation about the price. Suddenly they're willing to pay  
4 \$600,000, these unnamed businessmen, or tourist industry, or  
5 Alptekin's Dutch shell company, whichever lie the defendant is  
6 telling at the time.

7 Government's Exhibit 17. Now, look, he says he did  
8 not touch the adviser support at 20 percent. I'm not going to  
9 spend a lot of time on this, folks, but this, this all refers  
10 to this supposed refund. You've seen the invoices. You've  
11 seen the bank account records. You're going to have them all  
12 with you. You've seen the wire transfer.

13 This is, this is coming right out of the payments  
14 from Alptekin to FIG and then back to Alptekin, except it's  
15 coming first from Turkey, from Alptekin's account in Turkey.

16 Now, why didn't we get an MLAT? Well, because we  
17 might not want to tell the government of Turkey that we were  
18 investigating the activities of the government of Turkey in  
19 influencing the American people in the U.S. Congress. So yeah,  
20 we didn't file an MLAT request with Turkey, as if it would have  
21 done any good, but even if it would have, we did not want to  
22 disclose at that point our investigation.

23 Now, if you look at Government's Exhibit A, now, this  
24 shows you his senior adviser status, and in the attached cost  
25 of goods sold, you'll see his 20 percent fee there, his adviser

1 fee.

2 Now, you know what the evidence shows you that is.  
3 That is a kickback, right? The evidence shows you that that's  
4 a kickback. It's money coming from Turkey. Now, we don't need  
5 to show you where the money came from. We don't even need to  
6 show that there was any money, okay? The question is was he  
7 acting as an agent of a foreign government without disclosing  
8 it? That's the question, whether he was paid or not paid.

9 But by looking at these transactions, it's a very  
10 strong inference, folks, that this money, because it came  
11 through Alptekin's account in Turkey, and then his 20 percent  
12 kickback was sent up to his shell company in the Netherlands,  
13 that tells you pretty strongly where the money is truly coming  
14 from.

15 And again, as I said, you compare 10, when it's the  
16 Truth Project, and 18A, when it's now the Confidence Project,  
17 those bullet points always the same.

18 Now, the end product of this whole engagement is  
19 going to be this video, and as you've heard from witnesses,  
20 including the videographer who took it, this was all about  
21 dirtying up Gulen. This had nothing to do with the investment  
22 climate or the financial picture or the finance investments,  
23 whatever, tourism, whatever. It was single-mindedly focused on  
24 dirtying up Gulen, portraying him as a terrorist and a fraud  
25 and getting him extradited.

1           Now, if you had any doubt about who was driving this  
2 train, who the defendant knew, understood was driving this  
3 train, it is this exhibit here, 20, this chat. Note it's on  
4 August 25, right? We're already calling it Confidence. This  
5 is all about businessmen or Alptekin's company or whatever, and  
6 Alptekin tells the defendant: We are confirmed to go. Meeting  
7 him tomorrow for details.

8           And he says in response: Great. Now I can engage  
9 the film crew.

10           So this is the word he's been waiting for: We are  
11 confirmed to go. Not from Alptekin, you are confirmed to go.  
12 I'm Alptekin, I'm the client now, you are confirmed to go. No.  
13 He, he said: We are confirmed to go. Meeting him tomorrow  
14 evening for details.

15           And then this drives the point home, okay? I'm  
16 meeting -- let's meet tomorrow night, assuming my flight isn't  
17 delayed. I'm meeting MC's boss, you know, not direct boss but  
18 you know who.

19           And this is, this is the opening ceremony for that  
20 beautiful bridge you saw. This is taking place the day before,  
21 and Alptekin's here telling him: Tomorrow, at the opening of  
22 the Third Bridge -- at the opening of the Third Bridge, I'm  
23 going to be meeting perhaps No. 1.

24           But no matter what, either way, MC, the foreign  
25 minister, Mevlut Cavusoglu, either way, he said: We're a full

1 go. Not you got the full go from me because I'm the client.  
2 No, not that. He said: Either way, you're a full go. I've  
3 heard it from the foreign minister himself.

4 Now, this Skype chat, again, if you come to this --  
5 this is the same day, same day as the full go. Alptekin says:  
6 I want the Flynn's -- I want Flynn's CV.

7 And rather than profile "they" ask for a full CV,  
8 Rafiekian says: Okay. I'll get it for you.

9 "They" want his full CV, not "I" want it. They.  
10 Who? Minister Cavusoglu and the rest of his buddies in the  
11 council of ministers.

12 Now, this, this 19, now he's sending this draft  
13 engagement now that he's gotten the go-ahead, and this brief  
14 engagement will not entail operational details for obvious  
15 reasons.

16 I'll say. And you know what those obvious reasons  
17 are.

18 Now, again, later in this e-mail, there's that same  
19 20 percent cut that he's going to get. And now there's this,  
20 this -- actually let's just pass over that because that's not  
21 as important as this, okay?

22 Again, here it is, "Confidence," right? Business  
23 community, tourism, you know, confidence in the climate here.

24 No.

25 Thank you for sharing this important publication.

1 This work is critical on a global scale as it relates to  
2 international security on the most sensitive and critical  
3 levels.

4 Doesn't sound a lot like tourism. Doesn't sound a  
5 lot like foreign investment in Turkey. This sounds a lot like  
6 the message that the government of Turkey and Erdogan have been  
7 trying to get across to the United States government and that  
8 they haven't yet been able to do because of the crisis that  
9 he's -- that's reflected in that *New York Times* article.

10 Now, that's a theme, as I said, that's going to go  
11 throughout this whole project. Look at Government's  
12 Exhibit 8B. We're ready to engage on what needs to be done.

13 And, you know, Turkey's security and stability is  
14 extremely important. Government's Exhibit 13 is the same  
15 effect as is Government's Exhibit 10.

16 Now, all of those, by the way, are back when they're  
17 still calling this project Truth and when it's for the Turkish  
18 government, as the defendant admits to his lawyers. But here's  
19 one thing that really drives again the nail home, and that is  
20 this e-mail about backdating or, rather, postdating the date of  
21 the agreement.

22 He says here: We have been at work on this  
23 engagement since July 31. However, we decided to set the date  
24 as August 15.

25 Well, why would they do that? Because July 31,



1 folks, is when they were still working for the government of  
2 Turkey. That's when they still had this project about Gulen,  
3 back when they were talking about truth. So we don't want to  
4 date it then. We've got to date it for the 15th now that we're  
5 talking about Confidence and business climate and all of that  
6 other stuff.

7 So that's why they have to postdate that contract.

8 Now, next comes this playbook that the defendant  
9 drafts, and you'll see in there the mission, okay? All about  
10 X, who you now know is Gulen.

11 And this has nothing to do with foreign investment in  
12 Turkey. Nothing at all. In that last bullet point there,  
13 register under the Lobbying Disclosure Act, that, folks, is --  
14 look, Alptekin, or, rather, the defendant was going to lie  
15 about who was the client, no matter whether it was FARA or the  
16 LDA, and so he went to Kelley, but when -- it was Sphere that  
17 was raising the questions about whether to file, how to file  
18 and what not, and so Alptekin -- rather, the defendant went to  
19 his friend, Mr. Kelley, and said: I've got to file under FARA.

20 And Kelley says: Who's the client?

21 And the defendant says: It's a private entity.

22 Lie. You know it's a lie. But it's a lie.

23 But the fact that he went to Kelley and said, "I need  
24 to file under FARA," he didn't care whether it was FARA or  
25 whether it was under LDA. What he cared about was that it

1 didn't reveal who the true client was: the government of  
2 Turkey.

3 His intent throughout this was to lie about that, and  
4 so the fact that he went to Kelley, so what? He was going to  
5 lie and he did lie to Kelley, his good friend, and not only did  
6 he lie to him; he took advantage of him. Because as Kelley  
7 told you, he did this for a friend. He didn't do it as a  
8 lawyer. He did it for his friend. He asked him one question,  
9 the defendant gave him one answer, and that was that.

10 Now, again, this playbook has this *60-Minute*-style  
11 video that's going to document their investigation. Now,  
12 here's the scenario for that video. You're never going to  
13 guess who it's about. And it is, indeed, about strategy to  
14 combat the rise of radical Islam. And who can do it? Only  
15 Erdogan.

16 Same theme. Same theme throughout all of this.

17 Now, you'll see here that right after this  
18 November 12, when he, when he sent the agreement to Alptekin  
19 and agreed to the 20 percent kickback, he writes this e-mail to  
20 Flynn, Jr. -- we'll call him Flynn, Jr. Michael Flynn is, is  
21 General Flynn's son. And he says: Michael, we need to wire  
22 40,000 to Mr. Ekim Alptekin. He is our outside adviser on the  
23 Confidence Project.

24 Wait a second. Our outside adviser? I thought he  
25 was the client. Why are we paying him \$40,000? He's supposed

1 to be paying us 200,000. Why are we, why are we paying him?

2 And why is because, well, there's that -- there's  
3 that whole kickback thing, but, you know, that's, that's, you  
4 know, a problem we have to explain, but how do they do it?

5 And again, attached is the general scope adviser  
6 agreement for Ekim Alptekin. This is not the one for FIG to  
7 act as the adviser. This is the one for Alptekin to act as the  
8 adviser. And why? Well, they've got an audit trail now to  
9 properly document the relationship. Of course, they need an  
10 audit trail. You need to explain what's going on.

11 But you can't explain away the fact that now FIG is  
12 supposed to be providing outside services to Alptekin for  
13 \$200,000 and then Alptekin is supposed to get back \$40,000 as  
14 the outside consultant to the outside consultant, who's the  
15 outside consultant of the outside consultant. It's just a  
16 circle of lies, folks. It makes no sense, and it's entirely  
17 fabricated.

18 Now, the next thing to happen here is this high-level  
19 meeting with the client in New York on the 19th or 20th, and,  
20 in fact, not only is it high-level, but as, as the defendant  
21 tells you there, it's a cabinet-plus level related to  
22 Confidence. Now, he lied about that later. He told, he told  
23 Mr. Kelner it had nothing to do with Confidence, you know, this  
24 was just kind of a meet-and-greet thing. This didn't have  
25 anything to do with it.

1 Right here he tells you that it was related to  
2 Confidence. Not only was it related to Confidence, but -- let  
3 me back up one second. Not only was it related to Confidence,  
4 but, as you heard, Mr. McCauley was paid \$5,000 for the purpose  
5 of attending it, and as you'll see, the check to him was -- the  
6 memo was "Confidence." This meeting was about Confidence.

7 And -- now, at the meeting, McCauley was there. He  
8 couldn't hear everything, but he heard enough. He couldn't  
9 hear everything because Woolsey was there, Woolsey was  
10 distracted, he wasn't paying attention, he was making noise.  
11 So McCauley couldn't hear everything that was going on, but he  
12 certainly could hear that they were talking about Gulen, they  
13 were talking about extradition, they were talking about Gulen  
14 being a terrorist, and they were talking about how Gulen is the  
15 Osama Bin Laden of Turkey.

16 And all of that is happening during this time, right?  
17 Now, this is the lead up to that meeting in New York on  
18 September 9.

19 Then, this you'll see is September 14. Again, this  
20 is before that meeting but well after they're claiming that  
21 this is for the Turkish business community.

22 Now, what's he say there to -- this is Alptekin to  
23 the defendant: MC's guy, in other words, the foreign  
24 minister's guy who is read into Project Confidence, advised me  
25 to include an op-ed that FIG would get published.

1           Now, he says "under my name." In fact, ultimately it  
2 was under Flynn's name, but what this tells you is that as late  
3 as September 14, the defendant understands directly from the --  
4 from Alptekin that the foreign minister of Turkey is still very  
5 much involved in this project and still very much engaged in  
6 directing it.

7           This wasn't some separate project. This was always  
8 the same, no matter what they called it, and MC's guy being  
9 read into the Project Confidence tells you that that never  
10 changed, because MC's guy is read into Confidence. He's not  
11 read into Truth. He's not read into that other thing. He's  
12 read into this completely separate project for the business  
13 community or the tourism community or the Dutch shell company  
14 or somebody, but it's a completely different thing.

15           Now, here we are leading up to the meeting in New  
16 York. It's September 18. This is the day before the meeting.  
17 The defendant drafts talking points for that meeting, and he  
18 sends them to Alptekin and to Flynn, and he's limiting the  
19 distribution at that time.

20           Now, those talking points are here: background and  
21 talking points. Again, you'll never guess who it talks about,  
22 but somebody sitting under an apple tree in Paris.

23           These are the talking points that he's telling Flynn  
24 and Alptekin: Here's what we're going to cover with the  
25 ministers in New York when we're meeting with them.

1           And he again compares him to Gulen. The same, same,  
2 same theme that's gone through this whole thing.

3           Now, what are the questions that he's putting forth?  
4 Well, as you'll see when you see those, there's nothing about  
5 those that has anything to do with business climate. It's all  
6 about Gulen.

7           And here it is again. The theme that carries through  
8 this whole thing: Keep Erdogan close and give him Gulen,  
9 because he's the only one that can fix our problems.

10           Now, this is on -- so they have the meeting in  
11 New York. Then after that meeting, you'll recall they had the  
12 meeting at the University Club, which was to go over the status  
13 of the project, right?

14           And as you heard from Greg Lowman -- by the way,  
15 here's the check to -- as you heard from Greg Lowman, there  
16 were talking points that were passed out at that University  
17 meeting. And guess what? They were the very same talking  
18 points that the defendant had sent to Alptekin and to Flynn to  
19 talk over with the foreign ministers.

20           This is not some separate meeting, having nothing to  
21 do with each other, as he claimed. You know, New York had  
22 nothing to do with Confidence. It just so happens that we had  
23 exactly the same talking points for the two projects, but they  
24 had nothing to do with each other. Don't -- don't pay  
25 attention to that.

1           Instead, what we have here is -- now, this is -- this  
2 is Greg -- Graham Miller, rather, writing to -- to the  
3 defendant. Note the date there: September 19, the day of the  
4 meeting with the foreign ministers, with the talking points  
5 that they're ultimately going to hand out at the University  
6 Club.

7           And Miller is asking him: What about this LDA versus  
8 FARA issue? It's still a very live issue here.

9           And the defendant even tells him: We're returning  
10 from New York, so, you know, we'll get with you. Our general  
11 counsel, Bob Kelley, will communicate with you on the LDA.

12           Now, what's important here is that on this first one,  
13 he said: Would it be possible to receive a copy of your  
14 counsel's recommendation?

15           Well, he never got a copy. Why not? Because if he  
16 had gone back to Kelley and said: I need a legal -- you know,  
17 I need a legal opinion here, Kelley would have started asking  
18 questions because he'd have to do it as a lawyer rather than as  
19 a friend. It would be more than just one question: Who's your  
20 client? It would have been a lot more than that.

21           So instead, he says: Bob Kelley will communicate  
22 with you. All right?

23           That, you know, never happened because Bob Kelley  
24 testified that he didn't do anything. But he answered that one  
25 question and then filed it LDA. There isn't any conversation

1 about this, but more importantly, they're in New York. They're  
2 talking about FARA versus the LDA. They're meeting with the  
3 Turkish foreign minister and Erdogan's son-in-law, and they  
4 don't think to mention it to Miller and Sphere and those  
5 outside. And, of course, they do think about it but they  
6 decide purposefully not to do so.

7 Here's the lobbying registration form. Now, this is  
8 what Mr. Kelley filed. Inovo is the client.

9 Well, as I said, it doesn't matter what, he was going  
10 to lie about that. And not only did he lie about it, but he  
11 left his friend, Robert Kelley, holding the bag by having him  
12 sign the LDA.

13 Now, 45(a), let's first talk about this November  
14 meeting at -- at FIG. This is when Alptekin is there and he  
15 blows up because there hasn't been enough progress on this  
16 thing.

17 You remember Jim Courtovich was there. He'd never  
18 met Alptekin before. He's on his way to the airport, and he  
19 decides -- the client's going to be there; I'm going to be  
20 there, too. So he's laser focused on this, the first time he  
21 met the client.

22 And so what does he hear? The first time he walks in  
23 the door, Alptekin says to me: You're the great star from  
24 Scandal, and yet you haven't done anything for me. Where's the  
25 Congressional hearings? Where's all the media coverage?



1 Where's DOJ action? Extradition, by the way.

2 And he turns to the defendant and he says: What am I  
3 going to tell Ankara? Not what am I going to tell, you know,  
4 the shell company up in the Netherlands? What am I going to  
5 tell Ankara?

6 And Ankara, of course, is the capital of Turkey,  
7 where the minister of foreign affairs hangs out along with all  
8 of the other minister friends that Alptekin has and has been  
9 telling him about.

10 Now, he blows up. This is the meeting very early in  
11 November, before the election, several days before the  
12 election. He blows up, and Rafiekian has got to scramble, and  
13 so what he does is he quickly drafts this op-ed for General  
14 Flynn to send out. And what he does when he sends this -- this  
15 is the first one you're going to see about this -- he sends it  
16 first to Alptekin, and he says to him: Ekim, a promise made is  
17 a promise kept. Here's the article.

18 When you see that article back in your deliberations,  
19 folks, you're going to see that it concerns only -- it concerns  
20 only the points that the Turkish government wanted made, right  
21 down to the apple tree analogy. This was all the defendant's  
22 handiwork. Now, there's the article; there's the analogy.

23 Now, this is after it's been approved by Flynn. He  
24 writes back November 4: Ekim, the arrow has left the bow.

25 Now, he claims that he told his attorneys this op-ed

1 had nothing at all to do with this project. It was Mike  
2 Flynn's idea, he's always been passionate about this, yada,  
3 yada. But instead, you see that it's him drafting it. And not  
4 only that, but it is done specifically, according to both of  
5 these e-mails, it's clear to you that he was doing it for Ekim  
6 and he was doing it in response to Ekim's fury at getting no  
7 results. And instead, he writes the e-mail -- this, rather, he  
8 writes the op-ed and e-mails it, saying: The arrow has left  
9 the bow. This is the promise that he made and that he kept.

10 Now, a promise, folks, is an agreement, and this is  
11 the agreement. It's the culmination.

12 Now, he couldn't get the video done, but he got  
13 basically the same thing in a high-profile article by General  
14 Flynn, making all these points that the Turkish government  
15 wanted made.

16 And so this is going to get very high-profile  
17 exposure. This is to give Alptekin what he needed, which was  
18 something to show Ankara. What am I going to tell Ankara?  
19 Well, tell them that Lieutenant General Michael T. Flynn wrote  
20 this article for you that ticks off all the points that we were  
21 going to do in that video, and it so happens to be exactly the  
22 same thing that started at the very beginning of this, when  
23 they were still calling it Truth and when they were still  
24 working for the government.

25 Now, this -- this -- now, so, folks, we have to prove

1 a conspiracy. Now, you're never going to find direct evidence  
2 of it, but this parallel activity between the defendant and  
3 Alptekin and these lies, not the least of which is this lie  
4 about the refund, it's clearly a lie. A lie about the op-ed  
5 and why it was written, clearly a lie. A lie about whether the  
6 New York meeting was related to Confidence or not. Clearly a  
7 lie.

8 When you've got those kind of lies going on, that  
9 tells you the intent of the defendant. It tells you what's  
10 going on inside his head, and that is, to work as an  
11 undisclosed agent for the foreign government.

12 Now, the evidence -- our conspiracy charges two  
13 objects, one being to make false statements on the FARA filing,  
14 but more importantly acting as a foreign agent for the  
15 government of Turkey. As the judge said, you can find one or  
16 the other. You have to be unanimous, but that's going to be on  
17 your -- on your deliberate -- your verdict form to fill out.

18 Now, you know from all the evidence that this was not  
19 a legal commercial transaction, because way back when he went  
20 to see Kelley, he knew he was going to lie about it, and by  
21 filing under the LDA, in fact, he violated FARA, as is  
22 mentioned by the judge in the Instruction 35, that section  
23 that's mentioned in -- in Instruction 35.

24 By not filing under FARA, he violated FARA. By not  
25 filing and revealing the government of Turkey, he violated

1 FARA.

2 Now, that's not what this case is about. The case is  
3 about acting as an undisclosed foreign agent, but in order for  
4 it to be that, it can't be a lawful transaction.

5 And it was not a lawful transaction. All the  
6 evidence shows that this was an effort to obfuscate the  
7 involvement of the government of Turkey, and a part of that  
8 involved not filing under that section that the judge talked to  
9 you about.

10 Now, they will try to portray this as a simple  
11 regulatory violation that should have been, you know, dealt  
12 with in some sort of civil way, or maybe it was just a simple  
13 misunderstanding.

14 No, folks. When you get in bed with the top of the  
15 foreign government, with a government of Turkey, to influence  
16 the American people and the American Congress and the United  
17 States Department of Justice, when you do all of that and keep  
18 it a secret, that is acting under the direction and control of  
19 a foreign government, and that is a heck of a lot more serious  
20 than simply failing to file something with a FARA unit.

21 They tried to subvert the American process so that  
22 Erdogan could get his hands on Gulen. This was a fundamental  
23 foreign policy point that was going on between Turkey and --  
24 and the government of the United States. And they tried to  
25 subvert and influence that position by making it appear as if

1 Michael T. Flynn had this opinion about Gulen and lying about  
2 who was behind it. And -- and that is the fundament of this --  
3 of this case, lying about it, as they told so many lies and as  
4 you've seen.

5 So I ask you to find the defendant guilty of both  
6 counts because he is guilty. The evidence shows that he's  
7 guilty, and I ask you to find him guilty as charged.

8 Thank you very much.

9 THE COURT: Thank you, Mr. Gillis.

10 Ladies and gentlemen, we're going to take a short  
11 recess before we proceed with the defendant's closing. We'll  
12 take about a ten-minute recess. You're excused to the jury  
13 room. Please do not discuss this case among yourselves.

14 (Jury out.)

15 THE COURT: All right. Court will stand in recess.

16 (Recess from 4:42 p.m., until 5:04 p.m.)

17 (Defendant present, Jury out.)

18 THE COURT: All right. Let's bring the jury out.

19 (Jury present.)

20 THE COURT: Please be seated.

21 Mr. MacDougall?

22 CLOSING ARGUMENT

23 BY MR. MacDOUGALL:

24 Thank you, Your Honor. May it please the Court.

25 Members of the jury, harken to the evidence, to the

1 complaint the defendant pleads that he is not guilty and for  
2 trial places himself upon the country, which country you are.  
3 You are now sworn to try the issue. If he is guilty, you will  
4 say so. If he is not guilty, you will say so and no more.  
5 Members of the jury, harken to the evidence.

6 I first heard those words in a country courthouse in  
7 a place called Rock Hill, South Carolina, some years ago,  
8 shortly after I left the Justice Department, and that's right,  
9 I once sat on this side of the courtroom, as did Mr. Trout and  
10 Ms. Mitchell.

11 It was a capital murder case, and it went on for some  
12 time, and I sort of forgot about those words when they were  
13 used to call the jury together, but they left -- I remembered  
14 them, and in short, a couple years later, I heard them again in  
15 a courtroom in Massachusetts.

16 He is not guilty and for trial places himself upon  
17 the country, which country you are. And that's the essence of  
18 the jury.

19 Judge Trenga, at the beginning of the trial when you  
20 were first assembled, made note of the fact, and it's a  
21 remarkable fact, truly, that this country, the United States,  
22 is one of the very few that has a regular assembly of jurors  
23 like yourselves. Much of the world, there are professional  
24 jurors, there are magistrates, there are other systems that  
25 don't draw from the community, draw from the people, draw from

1 the country, and form a jury.

2 And there's an incredibly important reason for that.  
3 And the men and some women, but the men who devised that walked  
4 actually the streets of this town 240 or so years ago. The  
5 best known, the one who, who gets the credit by most  
6 historians, James Madison, knew what it was like to live under  
7 a king. He knew what it was like to live with a government  
8 that decides who's guilty and who isn't. And so he included in  
9 our Constitution the Sixth Amendment, the right to a jury  
10 trial, a right for a defendant to plead not guilty and to be  
11 put upon the country.

12 And here's why he did it. Do you know why he did it?  
13 They've got to get past you. They can investigate, they can  
14 take Skype messages, they can question people over and over  
15 again, but before any citizen is guilty of any crime, they have  
16 to get past you, the country.

17 So today Mr. Rafiekian has put himself upon the  
18 country, put himself upon the jury, and that's you.

19 My grandmother was from Cape Breton Island in Nova  
20 Scotia. You may have never heard of it, but it's, it's a part  
21 of Canada that juts on the edge of the North American  
22 continent. It's pretty rural now. Most of the coal mines shut  
23 down years ago and the farms.

24 But she, she was a school teacher 100 years ago this  
25 year in a place called Hay River, a little one-room

1 schoolhouse. It's actually still there. And she moved to  
2 Boston with many people from Cape Breton Island and married my  
3 grandfather and had 5 children and 20 grandchildren.

4           She was, to me and really to all of my cousins, the  
5 most remarkable person I've ever known. She was tough and she  
6 was wise and she was smart, and she would tell us things that  
7 we, now in our middle age and some of us our late middle age,  
8 still remember, and one of them is, and I've been thinking  
9 about it in the last few days -- and I won't try to do justice  
10 to her West Highland brogue, as I would just embarrass myself  
11 and her memory -- but she would tell her grandchildren all the  
12 time when there was some question about what we were saying:  
13 Just because you say it, dear, doesn't make it true. Just  
14 because you say it doesn't make it true.

15           And I will ask you to remember that. I'll mention it  
16 a couple of more times before I'm done this afternoon. When  
17 you listen to the government's rebuttal and you go into that  
18 jury room to deliberate, just because you say it doesn't make  
19 it true.

20           It was the same with all my grandmother's 20  
21 grandchildren. It's the same with the prosecution today.

22           A week ago, Mr. Gibbs in his opening statement began  
23 with: As a nation, we value transparency.

24           Really? Transparency? If we're so transparent,  
25 where is Michael Flynn? Where is Michael Flynn? He hasn't



1     been in this courtroom.

2                 Now, the company is named after him, of course. He  
3     was the largest stockholder of Flynn Intel Group. There's  
4     Michael Flynn. He was the chief executive. He signed the FARA  
5     registration form, Defense Exhibit 60, which Mr. Gillis did not  
6     ask you to look at but I surely will. The op-ed was published  
7     under his name, along with lots of other op-eds he published  
8     during the election campaign in 2016.

9                 He has a wide-ranging, deep cooperation agreement, as  
10    you heard his lawyer, Mr. Kelner, testify with his plea  
11    agreement, that obligates him to do whatever the government  
12    needs him to do from investigate, to cooperate, to testify, to  
13    appear, to go in the grand jury. All of those things, and you  
14    never heard from him. Transparency. You never heard from  
15    Michael Flynn.

16                Now, Mr. Gillis may well tell you on rebuttal the  
17    defense could have called him, and that's technically true, of  
18    course, but as the judge instructed you, our job is not to  
19    prove Mr. Rafiekian's innocence. Our job is to demonstrate to  
20    you the evidence in this case that proves he is not guilty.  
21    And more than that, Mr. Flynn is a wholly owned subsidiary of  
22    the prosecution, as his own lawyer testified.

23                So we haven't seen Mr. Flynn here at all from the  
24    beginning to the end except his picture, which has been marked  
25    as Defense Exhibit 77.

1           Transparency. As a nation, we value transparency.  
2   What about Mr. Flynn's mysterious relationship with Alptekin  
3   that you heard about this morning that is now in evidence as  
4   Defense Exhibit 66? It's only a sentence long, but you really  
5   ought to have a look at it.

6           The United States government, the United States  
7   government is in possession of multiple, independent pieces of  
8   information relating to the Turkish government's efforts to  
9   influence the United States, the United States policy on Turkey  
10   and Fethullah Gulen, including information related to  
11   communications, interactions, and a relationship between  
12   Alptekin and Flynn, and Alptekin's engagement of Flynn because  
13   of Flynn's relationship with an ongoing presidential  
14   campaign -- and here's the killer -- without any reference,  
15   without any reference to the defendant or the Flynn Intel  
16   Group.

17           Read that carefully. It makes your head spin. We've  
18   got lots of secrets, lots of bits of information about Alptekin  
19   and Flynn and what they were doing, but we're not going to tell  
20   you. We've got them, but we're not going to tell them. We  
21   don't want you to know.

22           We're a nation that values transparency. Perhaps. I  
23   hope we do. In this case, not so much.

24           And how about the Turkish bank records? You heard  
25   Mr. Gillis talk about those. Well, we didn't want to use our

1 mutual legal assistance treaty with Turkey to get bank records  
2 because it would tip off the Turkish government of what was  
3 going on, except they weren't Turkish bank records. They were  
4 the bank records of Mr. Alptekin.

5           The United States, as with many countries, and you  
6 heard this testimony, has a very active relationship with  
7 Turkey, and asking for a private citizen's bank records is not  
8 going to blow any investigation. They don't have them because  
9 they didn't try to get them because they didn't use the MLAT  
10 request, and that's why you haven't seen them. And you haven't  
11 seen them, and you can't know, and they don't know.

12           But they didn't go looking for them, and I suggest to  
13 you one of the reasons, perhaps the only reason they didn't go  
14 looking for them, is they knew there was no evidence in there.  
15 They knew what you know, that there is no evidence of the  
16 Turkish government paying a nickel toward this matter,  
17 transferring any money to Alptekin. They didn't want to know,  
18 and they didn't want you to know.

19           You don't have to guess in this case. You don't have  
20 to speculate. You don't have to imagine anything as a jury.  
21 The Court instructed you to only consider the evidence, and you  
22 take those instructions back with you.

23           This case is about Bijan Rafiekian, a man 65 years  
24 old at the time, 2016-2017, an immigrant to this country,  
25 worked hard, raised his family, served the country whenever he

1 could, and faced -- and when he was faced with a legal matter,  
2 he did what people do when they have a legal matter and they're  
3 not lawyers: He called a lawyer. Then he called several more.

4 He told the lawyer that he wanted to file under FARA.  
5 You heard that witness on, on Thursday of last week, and that  
6 lawyer told him that he didn't have to file under FARA; he had  
7 to file under the Lobbying Disclosure Act.

8 He then went to another -- he went to another lawyer  
9 before that with the leading law firm in the planet, and that  
10 lawyer's politics didn't match up, and now the government wants  
11 to make him a criminal. Now the government wants to make  
12 Mr. Rafiekian a criminal for going to a lawyer, asking the  
13 lawyer for help, paying a lawyer \$10,000, and doing what the  
14 lawyer said.

15 Those are the facts. There's no other side to that  
16 story. That's what happened.

17 You heard Mr. Kelley, the tall gentleman with the  
18 gray hair. He was paid. A long history, practicing lawyer.  
19 Looked at the situation, looked at the facts, and told  
20 Mr. Rafiekian what his advice was, and Mr. Rafiekian took it.

21 Essentially what the government is asking you to do  
22 is convict a man because the form he filled out is not the one  
23 the government likes. That's what this is all about. Clear  
24 away all the debris and all the talk and all the paper. That's  
25 really what it's like, and we'll get right to that in a minute.

1 But you need to understand the world of Michael Flynn  
2 and Bijan Rafiekian during the time we're talking about:  
3 August 2016 to March 2017, about a six-month period. Summer  
4 before the election, election happens in November, the  
5 inauguration in January, Mr. Flynn loses his job about three  
6 weeks later, the FARA registration form that is at the very  
7 heart of this case is filed shortly after that, September 7.

8 So let's go -- I'm sorry, March 7, excuse me. Strike  
9 that.

10 So let's go back to September and October 2016.  
11 Things are pretty good. Flynn Intel Group has got its first  
12 shot at a contract, its first significant shot at a contract  
13 with Inovo. They're hoping for a larger contract. They're  
14 hoping that larger contract is on the way. These are two  
15 separate things. Inovo is Inovo, and that deal is on its way.

16 Now, Flynn at the time, again, we're talking about  
17 September and October 2016, is getting a lot of attention. He  
18 speaks in a fairly notorious way to the Republican National  
19 Convention. He is making speeches. He is writing op-eds, and  
20 you have many of them in evidence.

21 In November, things keep getting better. They filed  
22 under the LDA, they're working on the contract, and then Trump  
23 is elected president. Flynn is going to become somebody really  
24 important now. He's going to become a Cabinet member or the  
25 equivalent.

1           And in January, the inauguration happens, and Flynn  
2           is the national security adviser. So Bijan and Flynn begin, as  
3           you've seen through their correspondence, closing down Flynn  
4           Intel Group. You can't be an important government functionary,  
5           an important government official, and have a private business.  
6           So they're closing it down.

7           Unfortunately for him, Mr. Flynn's time with the  
8           administration lasts less than four weeks, and on February 13,  
9           2017, he is fired in disgrace by many accounts. His reputation  
10          is badly damaged. The business, Flynn Intel Group, is gone.  
11          Bijan Rafiekian is unemployed, and so is Michael Flynn.

12          So take that period of time and go from the heights  
13          of what looked like, you know, coming prosperity and then  
14          political success to late February-March. Flynn is out of a  
15          job. Bijan is out of a job. Their company is gone.  
16          Everything has gone very badly.

17          And then they try to get the FARA registration done.  
18          What's really going on here -- and we'll talk about  
19          Mr. Alptekin's role in this -- these are not businessmen,  
20          Michael Flynn and Bijan Rafiekian. These are not people who  
21          are entrepreneurs, you know, who have developed great,  
22          successful businesses.

23          Flynn has been in the Army most of his life, and  
24          Bijan has been in the government for much of his life and has  
25          had a little bit of experience in the financial world, but

1 these are not successful businessmen. This is their first  
2 substantial paying client, Inovo.

3           They have a public profile by association with the  
4 Trump campaign, and Alptekin -- and you can reach this  
5 conclusion yourself pretty easily -- is an operator. He's a  
6 player. He wants to be a big shot. He is in Turkey, where  
7 he's got some money, and he wants to be a prosperous,  
8 well-connected guy with the government.

9           If you live in Washington long enough, you meet a few  
10 of these people, and sometimes you meet a lot of these people,  
11 and they're trying to develop a relationship and a profile with  
12 the government, and Gulen is a hot topic. Mr. Gillis is right  
13 about that. We agree on that. Gulen is a very big deal.  
14 Gulen is alleged, and I have no idea whether this is true or  
15 not, to have been involved with the attempted coup. He is a  
16 controversial leader. He is a big deal.

17           So you've got an operator in Alptekin and you have a  
18 hot topic in Gulen and you've got that magical formula that has  
19 people thinking here's my play. Here's how I can ingratiate  
20 myself to the leadership. So he's making an investment. He's  
21 putting a deal together.

22           But don't forget Exhibit 66, all the things we don't  
23 know about his relationship with Michael Flynn, the parts we  
24 haven't been told about. Don't let that go.

25           So Alptekin connects with, with Bijan, connects with

1 Flynn, and then the work happens, and you, you heard about the  
2 dissatisfaction that Alptekin had with the results.

3 Let me touch briefly on one of the instructions that  
4 you're going to take back with you, and that's Instruction  
5 No. 35, what constitutes unlawful conduct, in particular, a  
6 legal commercial transaction. The judge recited this to you,  
7 gave this to you, and you will have it with you in the jury  
8 room.

9 A legal commercial transaction means any exchange,  
10 transfer, purchase or sale, of any commodity, service, or  
11 property of any kind, including information or intellectual  
12 property, not prohibited by federal or state legislation or  
13 implementing regulations. In order to be an agent of a foreign  
14 government, a person must agree to operate within the United  
15 States subject to the direction or control of a foreign  
16 government or official and engage in conduct other than a legal  
17 commercial transaction.

18 So you look at those instructions carefully because  
19 what they say -- and this is my interpretation of them, but you  
20 should read it for yourself and follow the judge's  
21 instructions -- what they say is if it's a legal commercial  
22 transaction, you're not a foreign agent, and I would suggest to  
23 you that that's exactly what this was.

24 This was Ekim Alptekin with some money to spend, with  
25 the goal of becoming a player in the Turkish hierarchy, as you



1 see people in Washington do all the time. He hires people in  
2 Washington who are connected, who have a big name, and Michael  
3 Flynn, who can make introductions, and that's all legal.  
4 That's a perfectly legal thing to do. So I would suggest to  
5 you that what you have there is exactly a legal commercial  
6 transaction.

7           So on March 7, I think the most important date in  
8 this case, after hundreds of hours of lawyer time from  
9 Covington at \$960 an hour, you didn't miss that part, a FARA  
10 registration is filed with the Department of Justice.  
11 Mr. Gillis never mentioned that in his presentation. Perhaps  
12 he will touch on it in his rebuttal.

13           If you don't read anything else, I beg you, I implore  
14 you, read Defense Exhibit 60, because that is the heart and  
15 soul of this case. That's what it's all about. That's the  
16 thing that you didn't hear about a few minutes ago, but you're  
17 going to hear about it in detail now.

18           This is the submission made by Covington on behalf of  
19 Flynn Intel Group on March 7, 2017, and let's take a look at  
20 it. Let's start with the cover letter. Second paragraph: In  
21 September 2016, the Flynn Intel Group publicly disclosed its --  
22 publicly disclosed its representation of Inovo BV in a Federal  
23 Lobbying Disclosure Act registration that was filed with the  
24 secretary of the Senate and the clerk of the House.

25           That's the Lobbying Disclosure Act that Mr. -- and

1 registration that Mr. Kelley filed that you heard from him  
2 directly last week.

3 So we start with that. Go to paragraph 4, where the  
4 lawyers from Covington say: This is an uncertain standard, not  
5 based on the statutory language and not defined in the  
6 department's regulations.

7 Nobody argues with that.

8 Nevertheless, because of the subject matter of  
9 Flynn's Intel Group work for Inovo BV, which focused on  
10 Fethullah Gulen, whose extradition is sought by the government  
11 of Turkey, the engagement could, could be construed, could be  
12 construed to have principally benefitted the Republic of  
13 Turkey. To eliminate any potential doubt, the Flynn Intel  
14 Group therefore is electing to file a registration under FARA  
15 in lieu of the prior LDA registration.

16 That's it right there in black and white, submitted  
17 to the Department of Justice, the same Department of Justice  
18 that employs the prosecutors on March 7, 2017. But there's  
19 more.

20 When you look and you're keeping notes -- this is  
21 Defense Exhibit 60 -- have a look at page 25, which will be on  
22 the screen in just a second. You start with that block that's  
23 at the top: In September 2016, the Flynn Intel Group filed a  
24 registration under the Lobbying Disclosure Act for its  
25 representation of Inovo BV.

1           We already talked about that. That's in the cover  
2 letter. Here it is again.

3           Further down you see the Flynn Intel Group closed its  
4 operations in November 2016, all consistent with our history.

5           Go to the next paragraph: In August 2016, the Flynn  
6 Intel Group entered into a contract with Inovo, a consulting  
7 firm based in the Netherlands. The contract provided that the  
8 Flynn Intel Group would perform research, engage a public  
9 relations firm, and a filming and production crew to  
10 potentially distribute the results of its research, and hold  
11 weekly calls with the clients to discuss the project.

12           You heard all about that in the testimony.

13           Let's drop down to the next paragraph: Under the  
14 contract -- and we'll just go to the second sentence: The  
15 research, which was conducted by independent contractors -- you  
16 heard from many of them -- retained for this purpose focused on  
17 Mr. Fethullah Gulen and charter schools in the United States.

18           You heard the witnesses on that.

19           The next paragraph begins: In early September 2016,  
20 the Flynn Intel Group was invited by Mr. Alptekin to meet with  
21 a group of government officials from Turkey. And it goes on in  
22 the next page to name them all.

23           And then if you go on -- the same document, go on to  
24 the next page, the paragraph that begins: In late October and  
25 early November 2016 -- remember our time frame: September

1 2016, when everything's going great; November, there's the  
2 election; February, Flynn is fired; March, they're out of  
3 business.

4 In late October and early November 2016, General  
5 Flynn of the Flynn Intel Group developed an op-ed article based  
6 in part on the research conducted by the Flynn Intel Group, by  
7 the research conducted by the Flynn Intel Group -- not just  
8 him -- under the Inovo engagement.

9 Go down a couple of lines: In addition to General  
10 Flynn -- in addition to General Flynn, Bijan Rafiekian right  
11 here and an editor named Hank Cox, participated in the  
12 drafting. That's the famous op-ed with the apple tree.

13 So why did I make you go through this just now? Why  
14 is this important? Why is this the most important document in  
15 the case and the one that I beg you to look at?

16 Because it's all there. The whole story is all  
17 there. Signed by Michael Flynn, submitted by the Department of  
18 Justice, written by the four or five lawyers at Covington,  
19 spent 200 hours, the whole story is there, submitted to the  
20 government.

21 I don't get it. I don't understand it, but there it  
22 is. I don't understand -- there it is. It's right there in  
23 front of everybody.

24 Now, what about the two claims that the prosecution  
25 seems to love the best? I don't want to miss those. How about

1 the refund versus the consulting fee? Do you remember that?  
2 You've heard all about that. The refund versus the consulting  
3 fee. The \$40,000 payments. Money comes -- it doesn't come  
4 from the Turkish government, no evidence of that. Comes from  
5 Alptekin's account in Turkey to FIG. \$40,000 of it goes back  
6 to Inovo's account in the Netherlands.

7 What do we know about that? The first thing we know,  
8 and you heard this over and over again, and this is -- this is  
9 something that I think you can fairly infer from all you've  
10 heard, when people tell Bijan Rafiekian that he owes him --  
11 that he owes them money or his company owes them money, he pays  
12 them. He pays his bills.

13 You didn't hear one witness say that he hadn't been  
14 paid, that he wasn't paid currently. And I'm sure the  
15 government, if they had somebody like that, you would have  
16 heard them, but they have no one like that.

17 And you heard him pay \$10,000 to Robert Kelley.  
18 Mr. Kelley sat here and told you that.

19 \$3,400 to Mr. Enders, the young man with the beard  
20 who took the video.

21 \$40,000 to Sphere Consulting. You heard three  
22 different witnesses from that firm.

23 Massive bills. \$300-plus thousand from Covington for  
24 legal fees.

25 So how do you know -- how do you know that

1 Mr. Rafiekian is returning money, as he said, to Inovo?  
2 Because Alptekin asked for his money back. And Bijan does what  
3 Bijan does when people say: You owe me money. He gives it to  
4 him. He gives it to him. No secret.

5 And Covington knew. Covington knew it all.  
6 Covington, who prepared Defense Exhibit 60, the FARA  
7 registration, knew about it. And here's how you can know about  
8 it: Look at Defense Exhibit 95A in evidence.

9 You will find in that exhibit on page 9, 0009, a  
10 table. And at the table at the top, where Covington disclosed  
11 and submitted to the government where all the money went, you  
12 see: Refund for reduction in scope. Refund for reduction in  
13 scope, \$40,000 and \$40,000. That's the money that was given  
14 back to Mr. Alptekin to his account in the Netherlands because  
15 he said so.

16 Look at the comparable page in Exhibit -- Defense  
17 Exhibit 60. And that's page 27. And by the time you see that  
18 on page 27, if you compare the two on the screen, you'll see  
19 that Covington decided that it was a consultancy fee, and  
20 that's how they published it.

21 When they had a draft, 95A, it was a refund. When  
22 they had -- when they submitted it, they called it a  
23 consultancy fee. You heard Mr. Kelner try to explain why that  
24 was, but keep in mind, Kelner's personal legal relationship is  
25 with Michael Flynn, not with Bijan Rafiekian. You heard him

1 testify to that.

2 His personal lawyer -- and the relationship he had of  
3 attorney-client privilege, that sacred, sort of vacuum-sealed  
4 relationship was there. So anything Mr. Kelner wanted to know  
5 about what this money was for, he had complete access to  
6 Michael Flynn and complete access to records, and that's what  
7 he entered.

8 But there's no doubt that Covington knew this was a  
9 refund. Why they put that -- why they called it a consultancy  
10 fee in the final version of Exhibit 60 -- Defense Exhibit 60 is  
11 up to you to decide, but it's known best to them. So that's  
12 one of the facts that the government seems to like the most.

13 There's one other. There's text messages. Text  
14 messages and Skype messages. And I must tell you I don't  
15 understand the technology, and I don't understand how all of  
16 this relates to the case, but there's a couple in particular  
17 that you heard about over and over again, and I don't want to  
18 be shy about them. We want to go back to them.

19 If you look at Defense -- I'm sorry, Government  
20 Exhibit 67J, that is the Skype message from Mr. Alptekin -- or  
21 communication with Mr. Alptekin to Mr. Rafiekian apparently on  
22 September 8, 2016. That will be on the screen in a second.

23 Do you remember this one? So here's my question  
24 about this: It says that they're communicating at 5:21 p.m.,  
25 except if you look down at the bottom, it was purportedly

1 Mr. Rafiekian's response, he said he's going to meet with MF,  
2 Michael Flynn, in 30 minutes at 1400, which I think is 2 p.m.  
3 This says it's 5 p.m.

4 Now, if it's 5 p.m. in the East Coast, that means  
5 it's well after midnight in Turkey. If it's 2 p.m. in  
6 Washington, then 5:21 p.m. is somewhere over the Atlantic  
7 Ocean.

8 I don't understand this. I don't know that the  
9 government's explained it to you, and I don't think it really  
10 conveys anything other than they're going to be -- they're  
11 going to be back in touch, but I would ask the question does  
12 this really suggest to you that Mr. Alptekin is in the prime  
13 minister's office after midnight in Ankara?

14 The companion piece, 67K, is the next day, Government  
15 Exhibit 67K. And have a quick look at that. That's the next  
16 day, September 9:

17 Bijan, I urgently need a BIC/Swift code and ideally  
18 an IBAN version of the bank account and, finally, an address  
19 linked to that account. I have the money but need to deposit  
20 it ASAP before the banks close.

21 I would suggest to you that you replace the word  
22 "deposit" with "wire" and this all makes sense. They have to  
23 wire the money. The suggestion the government's made that  
24 Alptekin is walking around Ankara with a suitcase full of cash  
25 that he's been given by the government is incredible.



1 Incredible in the purest sense of that word, which means  
2 unbelievable.

3 Just because they say it doesn't make it true, and  
4 snatching bits and pieces out of a text or Skype account and  
5 saying, oh, here's what it means, just remember Grandmother's  
6 words: Just because they say it, doesn't make it true.

7 Judge, Judge Trenga gave you instructions on the  
8 government's burden, the presumption of innocence and  
9 reasonable doubt, and that's the heart of our jury system.  
10 That's the heart of our criminal justice system. Reasonable  
11 doubt.

12 And you have the judge's instructions on that. And  
13 you'll, you'll have them close by when you deliberate, but what  
14 I'd like to tell you right now is the Top 10 things, the Top 10  
15 things in this case that you have to believe if you're going to  
16 convict Mr. Rafiekian of these offenses charged. You have to  
17 believe these, and if you can't believe one of them, then you  
18 can't convict him. I would submit that you can't believe any  
19 of them, but I'll let you be the judge. Top 10 list of things  
20 you have to believe, you have to believe to convict  
21 Mr. Rafiekian.

22 No. 1, in March 2017, when Defense Exhibit 60, the  
23 registration statement, is filed, Mr. Flynn and  
24 Mr. Rafiekian -- Mr. Flynn is disgraced, neither one have a  
25 job, the business is gone, they are out of money, so they

1 decide let's -- here's what we do now: Let's fool the  
2 government. Let's fake the government out somehow because we  
3 don't have enough problems. Let's, let's talk about a contract  
4 that we finished months ago and go through this elaborate  
5 scheme now, months later, to fool the government into thinking  
6 it was something else.

7           You have to believe that. You have to believe that.  
8 I suggest you can't.

9           The second is Covington billed Flynn Intel Group  
10 \$322,000. You have to believe that Mr. Flynn and  
11 Mr. Rafiekian, out of a job, Mr. Flynn disgraced, decided that  
12 the thing they were going to do in February and March -- look  
13 at the bills; the bills are in evidence -- in February and  
14 March 2017, decided that they were going to run up bills of  
15 \$300,000 trying to fool the government about a contract that  
16 had closed months ago, that they hadn't -- that they hadn't  
17 completed.

18           No. 3, you have to believe -- you have to believe  
19 that the government of Turkey, which the prosecution contends  
20 is behind all of this, is so intent on trying to keep this  
21 secret that they hire Amsterdam firm -- Amsterdam & Partners.  
22 You heard Mr. Durkovic testify. They're so intent on keeping  
23 it secret and so intent on keeping this effort that the  
24 government contends they have with the Flynn Intel Group to  
25 encourage the United States to extradite Gulen, that they

1 publish a book with their name in it, by a firm that filed  
2 under FARA, and filed and filed again.

3           You have to believe that the government of Turkey is,  
4 is somehow so inept that they've got this little secret  
5 operation going while they're blasting, blasting the fact that  
6 they're trying to get Mr. Gulen back and they've hired people  
7 to do it. You have to believe that.

8           If you want to convict Bijan, you have to believe  
9 that a man trying to commit deception, commit falsehood, to, to  
10 submit it -- to pretend to be something he's not, first goes to  
11 Covington -- Mr. Lenhard you heard about -- and said: I want  
12 to file under FARA. And he finds out Lenhard is a Democrat and  
13 that doesn't work for him. You have to believe that.

14           You have to believe No. 5, that Bijan, a man trying  
15 to fake the government out, then goes to Mr. Kelley and says  
16 not what do I do? He says: I want to file under FARA. You  
17 have to believe a man who's trying to keep this hidden says to  
18 his lawyer: I need to file under FARA.

19           No. 6. And I'll ask you to have a look at Defense  
20 Exhibit -- or Exhibit 6, Defense Exhibit 6, a stipulation,  
21 which is in evidence. Ms. Mitchell read this to you this  
22 morning.

23           You have to believe that Flynn and Rafiekian, as part  
24 of their scheme to hide all of this in the case of Flynn, go to  
25 the DIA, the Defense Intelligence Agency, as stated here, and

1 say: Here's what we're doing. Here's what we're doing. I  
2 want you to know about it.

3 You have to believe that people trying to commit this  
4 conspiracy did that.

5 And then, No. 7, you have to believe -- have a look  
6 at Exhibit 14. Mr. Rafiekian goes to another unnamed agency  
7 and essentially says: Here's what we're doing. In September.  
8 Both of these are in September. Here's what we're doing.

9 So this notion that we're trying to hide things has  
10 to coexist with men who are telling, evidently, everybody they  
11 can find: We're doing this for Turkey, in addition to  
12 submitting to the government. You've got to believe that if  
13 you're going to convict him.

14 You have to believe that the op-ed that has received  
15 so much attention in the last week, the one that makes a very  
16 disparaging remark about the Muslim Brotherhood, which for all  
17 I know may well be well intended and well placed, is done at  
18 the behest of the Turkish government that is very fond of the  
19 Muslim Brotherhood, as you heard.

20 You have to believe that that's what's going on, that  
21 an op-ed in service of the Turkish government has a direct and  
22 very nasty attack on the Muslim Brotherhood. That's because  
23 it's written by Michael Flynn, and that's his opinion. But  
24 you've got to believe that.

25 You have to believe that notwithstanding all that the

1 government has told you, there is not a scintilla of evidence  
2 of money from the Turkish government. You've got to believe  
3 that this plan was so slick, so well planned, that there's no  
4 evidence anywhere of money from the Turkish government. Now,  
5 there's also no effort by the United States to do that either  
6 under the MLAT, as you heard Mr. Gillis admit.

7 And finally, there's no evidence any Turkish official  
8 gave any direction. You have to believe that the scheme for  
9 the benefit of the Turkish government had no evidence and, in  
10 fact, had no action from the Turkish government. You have to  
11 believe all of those things if you're going to convict this  
12 man.

13 I don't think you can believe any of them. That's up  
14 to you. But if you don't believe one of them, you have to  
15 acquit him. Just because you say it, just because they say it,  
16 doesn't make it true.

17 The apple tree story, that didn't make the Top 10.  
18 It's No. 11, but I'll share it with you anyway. You heard  
19 Mr. -- you heard Graham Miller testify last week that Mr. Flynn  
20 sat in a meeting where Mr. Rafiekian told that story. I  
21 suspect Mr. Flynn sat in lots of meetings where Mr. Rafiekian  
22 told that story. It's a kind of an interesting story. It's  
23 got trees in it and Paris and, you know, all that.

24 The notion that Michael Flynn included that in his  
25 op-ed shouldn't surprise anybody. His partner, the guy he's in

1 business with, used to talk about it all the time.

2 Let me touch on some jury instructions that I think  
3 are important that I'd like you to consider carefully, and then  
4 we'll, we'll wind it up.

5 Instruction No. 7 that Judge Trenga read to you is  
6 captioned: Presumption of Innocence, Burden of Proof, and  
7 Reasonable Doubt. And in that, you will see the following  
8 sentence that I would ask you to make note of and think about  
9 and go back and look at before you deliberate:

10 Proof beyond a reasonable doubt must be proof of such  
11 a convincing character that a reasonable person would not  
12 hesitate to rely and act upon it in the most important of his  
13 or her own affairs.

14 That is the standard. That's the standard that's  
15 imposed in this case and every case, and I ask you to think  
16 very carefully about those words and what it means.

17 And just below that, there's another sentence that  
18 is -- takes it to a different, a different level, but I've  
19 always found it interesting and I always think it's worth  
20 pointing out in jury instructions. It says: If the jury -- if  
21 the country -- if the jury views the evidence in the case as  
22 reasonably permitting either of two conclusions -- one of  
23 innocence, the other of guilt -- the jury must, of course,  
24 adopt the conclusion of innocence.

25 So if you go back there and you say, Jeez, I don't

1 know, I'm torn, you know, I heard the evidence of both sides,  
2 then it's easy: Not guilty. And you don't have to listen to  
3 me. Those are the instructions that were given to you by the  
4 Court.

5 And that, that level of judgment is well short of  
6 beyond a reasonable doubt. But just in case you go in, you're  
7 kind of torn because you heard two different stories, look at  
8 this instruction, and I beg you follow this instruction.

9 I'd ask you to also have a careful look at  
10 Instruction No. 31, and that's captioned Advice of Counsel.  
11 You heard that when Judge Trenga read it to you. The  
12 defendant, while acting in good faith and for the purpose of  
13 securing advice on the lawfulness of his future conduct,  
14 sought -- or in this case, seeks -- and obtained the advice of  
15 an attorney whom he considered to be competent, and made a full  
16 and accurate disclosure -- sorry -- a full and accurate report  
17 or disclosure to this attorney of all important facts, and  
18 acted strictly in accordance with the advice, then, then that  
19 defendant would not be willfully or deliberately doing wrong in  
20 performing some act the law forbids or omitting some act which  
21 the law requires, as those terms are used in this instruction.

22 You met a lot of lawyers in this case, and they were  
23 all giving advice, and they were all charging for their time.  
24 You heard about Mr. Lenhard. He didn't testify. That was the  
25 first lawyer that Mr. Rafiekian went to with Covington. Then

1 you heard the testimony of Robert Kelley, the lawyer that he  
2 went to and said: I've got to file under FARA. Help me out.

3 He said: LDA, here you go.

4 And he was paid for that.

5 You heard at length from Mr. Kelner of Covington, and  
6 if you want to look at the bills, Exhibits 93, 94, 99, and 100,  
7 these are all defense exhibits, take a look at those. You will  
8 see a long list of other lawyers: Brian Smith, Steve Anthony,  
9 Catherine Langton. These are all the lawyers that passed on  
10 this, all the lawyers that prepared Defense Exhibit 60, the  
11 filing with FARA that's at the heart of this case.

12 Those lawyers were consulted, and I ask you, please,  
13 please, carefully apply Instruction 31 to the counsel that,  
14 that Mr. Rafiekian sought.

15 So I want to thank you because you've spent a week  
16 with us, on behalf of Mr. Trout, Ms. Mitchell, Ms. Hicks. This  
17 case is about a man, Bijan Rafiekian, who went to lawyers and  
18 asked them for help, asked them to help comply with the law.  
19 He did as they counseled him. He hired the leading lawyers in  
20 the land, Covington & Burling. He completed the forms as they  
21 advised. He disclosed everything, and then he went further.  
22 And if you want to know how far he went, again, I can't, you  
23 know, you're getting sick of hearing it, but look at  
24 Defendant's Exhibit 60. Look at the FARA registration. It's  
25 all there.



1           So now we're all here. You're here because the  
2 prosecutors claim that Mr. Rafiekian didn't fill out the form  
3 the way they would like.

4           Mr. Gillis used a phrase in his closing, and I want  
5 to return to that. He said, and I wrote it down and my  
6 colleagues did, too: "Strategize" is another word for  
7 conspiracy. "Strategize" is another word for conspiracy.

8           What? When you strategize -- if you remember,  
9 President George W. Bush used the name strategery for  
10 strategize -- if you strategize, if you make plans, you're  
11 conspiring.

12           That's the government's position, and that's what you  
13 see in this case. Just because you say it doesn't make it  
14 true.

15           So we ask on behalf of Mr. Rafiekian that you find  
16 him in this case not guilty on both counts. We ask that you  
17 apply your common sense, the things you've learned in life,  
18 working, raising children if you have them, paying your bills,  
19 and return the only verdict that can be reached in this case,  
20 in this very strange and confused case, of not guilty.

21           So Mr. Rafiekian has put himself upon the country,  
22 and so do we. You're the country. You're the people. You're  
23 the jury that's been selected in this case to judge this man.  
24 We ask you to do it well and carefully. God bless you.

25           THE COURT: Mr. Gillis?

## 1 REBUTTAL ARGUMENT

2 BY MR. GILLIS:

3 Thank you, Your Honor.

4 First of all, let's talk about this comment I made  
5 about strategy. I was trying to tell you that there are a  
6 number of ways to create an agreement.

7 Agreements aren't unlawful, obviously. Strategizing  
8 isn't unlawful, obviously, but when you strategize to avoid  
9 detection of what your agreement is about, when you strategize  
10 how to make it appear that it's a commercial, sort of business  
11 thing having to do with tourism or whatever in Turkey, when you  
12 do that kind of strategery, that is a crime. That is a  
13 criminal conspiracy.

14 So obviously, I'm not trying to tell you that any  
15 strategy, anytime you sit down and strategize, that, you know,  
16 football coaches are committing conspiracies left and right,  
17 but it's just one of the many words that can be used to  
18 describe any sort of agreement, and when it's being done  
19 criminally, that is a conspiracy.

20 Now, let's talk -- first of all, Mr. MacDougall spent  
21 a lot of time talking about what the evidence shows. It's all  
22 about talking about the evidence, looking at the evidence.

23 Well, I don't know why he went on for about  
24 ten minutes about his grandmother and his, and his family  
25 history. It's lovely to know, but this isn't quite the place

1 for it. But I will say this: that the evidence is what he  
2 didn't discuss.

3 Two things. First of all, he spent an extreme amount  
4 of time, virtually everything he had to say was whether or not  
5 this FARA filing in March was false and whether they conspired  
6 to make that thing false, and here's the thing: That's one  
7 object.

8 And if you're not persuaded by that, I submit you  
9 should be by the evidence, but if you're not persuaded by that,  
10 there's this other thing, the bigger thing, the conspiracy to  
11 violate 951, to act as a foreign agent in the United States, to  
12 influence the United States Congress and various Congressmen,  
13 to influence the American public by convincing General Flynn to  
14 write an op-ed about it.

15 Now, listen, folks. By the time that they did all of  
16 these things that he spent most of his time talking about, the  
17 fat was already in the fire. Two or three days, as you heard  
18 from the witnesses, two or three days after this op-ed came  
19 out, shortly before -- actually, on the election, it came out  
20 on Election Day, and two or three days later, they're writing  
21 opinions about this, calling into question this deal that FIG  
22 had with the Turkish government and Flynn's relationship with  
23 the Turkish government.

24 Now, the fat is in the fire by that time.

25 Lying about it on the FARA form is another

1 continuation of the conspiracy and how they were going to go  
2 about it. And, yes, at the very beginning, they had agreed  
3 that we're going to conceal it. It doesn't matter whether we  
4 lie on the LDA or we lie on the FARA, but we're going to  
5 certainly lie about the government being behind this, but by  
6 the time all of the things that he's talking about, that you  
7 have to believe this, you have to believe that, you have to  
8 believe this, that, and the other thing, all of that is after.

9 Because, folks, a conspiracy requires only two  
10 things: a criminal agreement, in other words, two people come  
11 together, like the defendant and the -- Alptekin, and they  
12 reach an agreement to act as an agent of the foreign government  
13 of Turkey, and they agree that they're not going to disclose it  
14 through the machinations that you've heard about all through  
15 this trial. Okay?

16 Now, a conspiracy is a separate crime from the --  
17 what we call the substantive count, or the second count, which  
18 is actually to do so, to act as a foreign agent. They're two  
19 separate crimes, and the law makes sense because when two  
20 people get together and conspire to commit a crime, it's pretty  
21 serious, and it's a serious thing that's more difficult to  
22 detect.

23 And so if, if, if that agreement takes place and  
24 somebody performs one overt act, as you know from the judge's  
25 instructions, the crime of conspiracy is complete at that

1 moment. It does not matter whether the conspiracy was  
2 successful. It does not matter, in fact, whether anything  
3 happened.

4 In that period of time up through August 10, in that  
5 midnight hour between August 10 and August 11, speaking of  
6 things you have to believe, I mean, he didn't say anything  
7 about any kind of reason why that might have been the case.

8 Now, we do have the burden of proof, and we wear it  
9 like a mantle. That is the foundation of our government. We  
10 certainly agree upon that. But we have carried that burden in  
11 spades because you have heard the evidence, but here's the  
12 thing: The defense does not have to put on a case. The  
13 defendant is presumed innocent.

14 The government has to prove him guilty beyond a  
15 reasonable doubt. That's our burden, and it's always our  
16 burden. It's our burden whether he chooses to put on a case or  
17 he doesn't choose to put on a case. That is our burden now, it  
18 was at the beginning, and it remains that way for the rest of  
19 history, I hope.

20 But when they do choose to put on a case, you can  
21 presume that these fine lawyers here put on the very best case  
22 they possibly could, they possibly could to explain all of  
23 this. And what kind of explanation did you hear for this  
24 midnight-hour shift from truth to confidence, from the  
25 government of Turkey, yes, we're working for the government of

1 Turkey, to all of a sudden, no, it's a completely separate  
2 thing. It sprang up out of nowhere. Just by happenstance  
3 happened to occur right at midnight, this thing with the  
4 government went away, and all of a sudden at midnight, we had  
5 this separate thing with Turkish businessmen. Astonishing bit  
6 of good luck.

7 But you didn't see any e-mails of that kind. As you  
8 heard, they had access to the very same evidence we did, the  
9 very same e-mails, those thousands, tens of thousands of  
10 e-mails that they had access to. Not a single shred of  
11 evidence did they choose to put in in their case trying to  
12 explain that midnight hour between August 11 and -- pardon  
13 me -- 10th and 11th.

14 To be clear, our burden is to prove him guilty beyond  
15 a reasonable doubt, but if they put on a case, you can expect  
16 that it would be the best one they can, and it certainly wasn't  
17 much.

18 Now, here's the other things. Why are we talking  
19 about Flynn here, right? Mr. MacDougall correctly points out  
20 that you're supposed to make your decision based upon the  
21 evidence in this case. Okay? What is the evidence? You've  
22 got it in the documents, and you've heard it from the  
23 testimony.

24 He's right, Flynn wasn't here. He says, well,  
25 technically we have the right to call him as a witness, after

1 spending so much time talking about the importance of the  
2 Constitution and how our Founding Fathers and Mothers thought  
3 about the importance of justice in this case, in every case.

4 And what the Constitution guarantees and what he  
5 passed over as a technicality, what the Constitution guarantees  
6 to the defendant is the right to compel witnesses to appear  
7 here, including Michael Flynn.

8 So we could have called him; they could have called  
9 him. They apparently didn't think it would be of any use to  
10 you, nor did we. But they -- if they wanted him here, that  
11 judge, Judge Trenga, would have ordered him to be here, to be  
12 on that stand so that you could hear from him.

13 They didn't do that.

14 Now, I want to get to this business about this  
15 supposedly earth-shattering exhibit, Defense Exhibit 66.  
16 Before I do that, though, I want to -- before I do that, let me  
17 say this, okay?

18 So imagine Tom and Dick. Tom and Dick are two bank  
19 robbers. They've got a string of bank robberies under their  
20 belt, and the United States government knows all about them.  
21 They know all about their string of bank robberies. They know  
22 that they're in a conspiracy together, okay? Tom and Dick do.

23 Now, later on, Harry decides to join Tom and Dick in  
24 another bank robbery, okay? Now, the fact that Tom and Dick  
25 and the government knew about Tom and Dick and their string of

1 bank robberies, the fact that the government knew about that  
2 and in the -- and didn't mention Harry until Harry joined the  
3 bank robbery scheme, so what?

4           So if you take a look at this Government's Exhibit --  
5 whoops, sorry. I beg your pardon.

6           If you take a look at this exhibit here, let's just  
7 replace Ekim with Tom, and let's replace Flynn with Dick. And  
8 then we can replace Rafiekian with Harry, and FIG with Harry  
9 and Dick's company.

10           And instead of talking about information related to  
11 the Turkish government, let's talk about the example of a bank  
12 robbery, and how about the interactions between these folks?  
13 Instead, it would be experience with bank robberies. Instead  
14 of his relationship with ongoing presidential campaigns, let's  
15 say it's bank robberies.

16           So what? So take a look at this, at this exhibit  
17 while you're -- and consider that it says nothing. It really  
18 says nothing at all, folks.

19           So what then should you take away from, from all of  
20 this? I want to say that -- let me emphasize again, conspiracy  
21 happens when the agreement happens in any overt act. An overt  
22 act can be anything completely legal, like sending an e-mail,  
23 like the one that the defendant sent to his team saying, hey,  
24 we've been hired by a bunch of Turkish businessmen. That's an  
25 overt act in furtherance of the criminal conspiracy they had.



1           So, so why are we talking about Flynn? Don't, don't  
2 look at my client. Don't look at my client. Here's Flynn.  
3 You've got to focus on Flynn.

4           But wait a second. But there's this whole thing  
5 about the midnight hour and there's the refund versus when, you  
6 know, when you got all these invoices and you got instructions  
7 and e-mails. You'll see them all. And yet he describes them  
8 as consulting fees, but later on he's telling you it's a  
9 refund. Why?

10           And all about these Covington lawyers? The Covington  
11 lawyers did not have those Skype chats that you now have that  
12 show the involvement of these Turkish officials that the  
13 defendant was told about by Alptekin.

14           So don't look at Flynn. Look over here while I pick  
15 your pocket. Keep an eye over here. Don't look at me. Don't  
16 look at me. I'm just the guy who had the deal with the Turkish  
17 government.

18           This isn't some -- this isn't some regulatory  
19 violation. This is not some small deal, as they would like to  
20 paint it. As I said before, this is about the Turkish  
21 government trying to influence our political system, and that  
22 is illegal.

23           Now, the fact that Robert Amsterdam was involved in  
24 this, so what? Robert Amsterdam is some on loan lawyer in  
25 Texas. I bet you that in the summer and fall of 2016, none of

1 you had heard of Robert Amsterdam. These guys couldn't even  
2 get his name straight. They kept calling him Anderson, right?

3 So if Robert Amsterdam writes a book like this, I  
4 mean, this is certainly a best seller, right? I mean, you guys  
5 would be going to bed with this every night, couldn't put it  
6 down, right? So that is Robert Amsterdam.

7 For him to say we should get rid of Gulen, and by the  
8 way, I'm being paid by the government of Turkey to say so,  
9 well, that's one thing, but for Lieutenant General Michael T.  
10 Flynn to write an op-ed piece that says Gulen is a bad guy,  
11 Erdogan is a good guy, we've got to get rid of Gulen, and when  
12 he does that as part of a scheme that is to influence the  
13 American political system without disclosing that Michael Flynn  
14 and the defendant are being paid and directed by the government  
15 of Turkey, let me return to this, payment is irrelevant.

16 Yes, we think the evidence proves it, but you don't  
17 need to worry about that. You won't hear anything in the  
18 judge's instructions when you go back and read them, you will  
19 not see anything about proving a payment. We have no  
20 obligation to do that.

21 And, in fact, the conspiracy was complete before any  
22 money changed hands because they agreed to do it and they  
23 committed an overt act in furtherance, and, bang, the crime is  
24 committed, and they didn't have to pay a single penny to do so.

25 So don't, don't be fooled by this, by this nonsense

1 about, about us not going and disclosing our case to the  
2 Turkish government and trying to get records from the Turkish  
3 government, when the minister of foreign affairs and the prime  
4 minister involved in the mix. That, that is the thing that's  
5 not worthy of belief.

6 So let me, let me close with this: I will tell you  
7 just one thing since Mr. MacDougall took the time. I want to  
8 tell you about my mother, who grew up in Italy, and she was  
9 practicing with her father as a lawyer. She had graduated in  
10 the 1940s from Italy. She had graduated as one of two women in  
11 a law school class of 400.

12 She met my father at the end of the World War, and  
13 they came here, and I was raised by her and my father,  
14 obviously.

15 But my mother had a very strong sense of justice.  
16 She was a lawyer, and she was practicing with her father. And  
17 the way she brought me up was to say that when you do something  
18 wrong, there are consequences for it.

19 That is justice as well, ladies and gentlemen. The  
20 evidence in this case does cry out for justice, and the only  
21 just verdict that you should return, I submit to you based on  
22 all the evidence that you've heard, the only just verdict is to  
23 find that man guilty of the crimes he's been charged with.

24 And I thank you very much for your attention.

25 THE COURT: Thank you, Mr. Gillis.

1 MR. MacDOUGALL: May we approach, Your Honor?

2 THE COURT: Yes.

3 (Bench conference on the record.)

4 THE COURT: Yes.

5 MR. MacDOUGALL: Your Honor, in Mr. Gillis's  
6 rebuttal, of course, the transcript will be the record of it,  
7 but it's quite clear that we heard him misdescribe  
8 "conspiracy." My hearing was that -- and I think Mr. Trout and  
9 Ms. Mitchell's hearing was -- that he said there were two  
10 elements, that there'd be an agreement and an overt act.

11 There are, of course, four that the jury has been  
12 instructed. We'd ask that the Court at a minimum provide a  
13 curative instruction with respect to that misstatement of the  
14 law.

15 MR. GILLIS: Your Honor, there are a number of  
16 different ways any number of different courts have explained  
17 it.

18 THE COURT: Right.

19 MR. GILLIS: Your jury instructions are perfectly  
20 clear. The jury is not going to be confused by having four  
21 versus two, and if, if -- I submit that the way I represented  
22 it was an accurate compression of the various courts that have  
23 discussed it.

24 THE COURT: I don't, I don't think it was -- they do  
25 have the instructions. I'm not going to give the jury an

1 instruction.

2 MR. MacDOUGALL: Okay, Your Honor.

3 MS. MITCHELL: Do you want me to make my point?

4 MR. MacDOUGALL: Sure.

5 MS. MITCHELL: Jim?

6 MR. GILLIS: Sorry.

7 MS. MITCHELL: Your Honor, I'd also raise for the  
8 record that I think --

9 THE COURT: I'm sorry?

10 MS. MITCHELL: For the record, I believe that there  
11 was a burden shifting in his, in his second argument,  
12 specifically when he referred to all the documents that were  
13 available to the defense to put in. They are not all  
14 available. Many of them are defendant's statements, which we  
15 are not permitted to put in.

16 I think that is an inappropriate representation of  
17 what we are permitted to put in.

18 THE COURT: I am more concerned about that.

19 MR. GILLIS: Well, Your Honor --

20 THE COURT: I know you tried to couch it in terms of  
21 the context of your own burden, but I am concerned that arguing  
22 that they put on the very best case they could --

23 MR. GILLIS: Yes.

24 THE COURT: -- and they had all this information that  
25 they could have put on --

1 MR. GILLIS: Your Honor, the context in which I said  
2 that was specifically about this, this August 10 to August 11  
3 time frame, and there was -- I made it abundantly clear to them  
4 that we had that burden and we keep it.

5 THE COURT: Right.

6 MR. GILLIS: But it's fair game, Your Honor, when --  
7 the Courts of Appeals make this perfectly plain, when the  
8 defense puts on -- chooses to put on a case, we can attack its,  
9 its sufficiency, its weight, but it's not shifting the burden  
10 for me to say in that context, they had the, the, the e-mails  
11 that, that we had regarding this arrangement, and there's --

12 THE COURT: All right. What I'm going to do is  
13 simply tell the jury that both sides have referred to the jury  
14 instructions. They should read those themselves and be  
15 governed by the jury instructions that they've been given.

16 MR. GILLIS: Thank you, Your Honor.

17 MR. MacDOUGALL: Thank you.

18 (End of bench conference.)

19 THE COURT: Ladies and gentlemen, in the instructions  
20 I gave you, I indicated that both sides may refer to the jury  
21 instructions, but if what they tell you is different than what  
22 you're instructed by way of my instructions, you obviously are  
23 to be bound by the instructions that I've given you.

24 Both sides have -- both parties have made reference  
25 to the jury instructions. You should refer to the written

1 instructions that you will have for the purpose of determining  
2 the Court's instructions and your obligation to apply the law  
3 with respect to the facts as you determine those facts.

4 We are now at the point where you need to begin your  
5 deliberations. I know you're eager to begin. It's going to  
6 take some time for us to assemble the exhibits and get those to  
7 you, and so I think it's best that we adjourn for the day and  
8 let you begin tomorrow morning fresh at 9:15.

9 It's also my duty at this point to excuse the two of  
10 you who were seated as alternate jurors, and that would be  
11 Sean Palmer and Ashraf Ahmadzai. It's always an unpleasant  
12 duty to excuse the alternate jurors because I know you've  
13 participated attentively during this process. I want you both  
14 to know that your contribution to this process has been as  
15 important as any other juror, and we thank you for your, your  
16 service. You may retire to the jury room with the rest of the  
17 jury, but you'll have to -- you will not return tomorrow for --  
18 to participate in those deliberations.

19 When you do return tomorrow, your first order of  
20 business should be to select one of your -- one of you as the  
21 foreperson. That person will simply have the duty to preside  
22 over the deliberations and to ensure that all members of the  
23 jury have a fair opportunity to express themselves. Beyond  
24 that, you can conduct your deliberations in any fashion that  
25 you, you deem appropriate.

1           One suggestion I would make, and it's only a  
2 suggestion, is that you not begin your deliberations as you may  
3 have sometimes seen in the movies, where you take -- everybody  
4 immediately takes a straw poll. It's just human nature that  
5 once somebody commits to a position, it's more difficult, it's  
6 more difficult to keep an open mind. So I would encourage  
7 you-all to have some discussion before, before committing to  
8 any, any particular position. But it's entirely up to you how  
9 you proceed with your deliberations.

10           You have no time limits. You can take as long as you  
11 need. When you need breaks, just tell Mr. Burns, and he'll  
12 excuse you for lunch or other breaks that you need.

13           What is important, though, is that all of your  
14 deliberations take place in the jury room together as a group.  
15 So if you break for lunch, don't discuss the case among  
16 yourselves during lunch. Even within the jury room, don't  
17 break up into smaller groups and discuss the case. All of your  
18 deliberations should be as a group, and everybody should have  
19 the benefit of everybody's thinking about the case.

20           If, if you need to contact the Court, simply knock,  
21 and Mr. Burns will be there, and he'll convey any messages  
22 that, that you need.

23           So with those instructions, I excuse you until  
24 tomorrow morning at 9:15. Again, it's particularly important  
25 that you not talk about this case with anyone outside of the



1 jury. Also, try to shield yourself from any publicity that you  
2 may, may be exposed to. It's important, obviously, that you  
3 decide this case solely based on the evidence here in the  
4 courtroom and not, and not be exposed to any other, any other  
5 information, and that would include any, any research that I've  
6 mentioned, any kind of social media, anything beyond what's  
7 been presented in this courtroom.

8 So with those instructions, you're excused until  
9 tomorrow morning at 9:15.

10 (Jury out.)

11 THE COURT: All right. Anything before we adjourn?

12 MR. GILLIS: Not from the government.

13 MR. MacDOUGALL: Not for defense.

14 THE COURT: All right. The Court will stand in  
15 recess pending hearing from the jury.

16 (Recess from 6:12 p.m., until 9:15 a.m., July 23, 2019.)  
17

18 CERTIFICATE OF THE REPORTER

19 I certify that the foregoing is a correct transcript of  
20 the record of proceedings in the above-entitled matter.  
21  
22

23 /s/

24 Anneliese J. Thomson  
25